INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining the jurisdiction	2
Statute of the State of Illinois the validity of which is involved	2
Timeliness of appeal and the decree sought to be reviewed	3
Nature of the case and the rulings of the court	3
Grounds and decisions sustaining appellate jurisdiction of the Supreme Court of the United States	19
Jurisdiction of subject matter	19
Discussion of State statute in question and cases relied upon by appellees and trial court	25
Conclusion	44
Appendix A—Memorandum opinion	45
—Special findings of fact	55
—Conclusions of law	68
—Order denying motion for interlocutory injunction	69
Appendix B—Findings of fact, conclusions of law and judgment in the case of *Beeler* v. *Smith* (Ky.) (June 4, 1941)	70

Table of Cases Cited.

Adams v. *Tanner*, 244 U. S. 590	21
American Life Ins. Co. v. *Stewart*, 300 U. S. 203	21
Beal v. *Missouri Pac. R. Co.*, 312 U. S. 45	39
Beeler v. *Smith*, — Fed. Supp. — (Appendix B)	20
Bransford, Ex parte, 310 U. S. 354	21
Cantwell v. *Connecticut*, 310 U. S. 296	23, 24, 29
Cline v. *Frink Dairy Co.*, 274 U. S. 445	20, 36
Colorado v. *Toll*, 268 U. S. 228	20, 25
Connally v. *General Constr. Co.*, 269 U. S. 391	26
Concordia Fire Ins. Co. v. *Illinois*, 292 U. S. 535	24

Page

Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479, 22, 23, 24, 30
De Jonge v. *Oregon*, 299 U. S. 353 ..... 22, 24, 27
Detroit Creamery v. *Kinnan*, 264 Fed. 845 27
Dials v. *Commonwealth*, 192 Ky. 440, 233 S. W. 888 .. 27
Dobbins v. *Los Angeles*, 195 U. S. 223 21
Fenner v. *Boykin*, 271 U. S. 240 39
Fidelity & Deposit Co. v. *Tafoya*, 270 U. S. 426 20
Fiske v. *Kansas*, 274 U. S. 380 ..... 23, 24
Greene v. *L. & I. Ry. Co.*, 244 U. S. 499 ..... 20, 24
Grosjean v. *American Press Co.*, 297 U. S. 233 ... 23, 24, 28
Hague v. *C. I. O.*, 307 U. S. 496 ..... 20, 23, 24, 29, 40
Hague v. *C. I. O.*, 101 F. (2d) 774 ..... 20, 24, 34
Hannan v. *City of Haverhill*, No. 211, October Term, 1941 2
Herndon v. *Lowry*, 301 U. S. 242 ..... 22, 23, 26
Johnson v. *Wells Fargo*, 239 U. S. 234 22
Kennedy v. *City of Moscow* (Idaho), 39 Fed. Supp. 26 ..... 20, 24
Kennington v. *Palmer*, 255 U. S. 100 21
Lanzetta v. *State*, 306 U. S. 451 ..... 22, 26
Lovell v. *City of Griffin*, 303 U. S. 444 24
Ludwig v. *Western Union*, 216 U. S. 146 21
Milligan, Ex parte, 4 Wall. 2 34
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317 20
Nashville, C. & St. L. Ry. Co. v. *McConnell*, 82 Fed. 65 ..... 21, 36
Near v. *Minnesota*, 283 U. S. 697 ..... 23, 24, 25
New Hampshire Gas & Elec. Co. v. *Morse*, 42 F. (2d) 90 23
Olmstead v. *United States*, 277 U. S. 479 34
Oney v. *Oklahoma City*, — F. (2d) — (June 9, 1941) 21, 24
People v. *Downer*, 6 N. Y. S. (2d) 566 ..... 25, 28
People v. *Edmonson*, 4 N. Y. S. (2d) 257 25
Petroleum Exploration, Inc., v. *Public S. Comm.*, 304 U. S. 209 ..... 21, 37
Pierce v. *Society of Sisters*, 268 U. S. 510 ..... 20, 22
Railroad and W. Comm. of Minn. v. *Duluth Street Ry. Co.*, 273 U. S. 625 ..... 21, 37

Page

Reid v. *Borough of Brookville* (*Pa.*), 39 Fed. Supp. 30 ..... 20, 22, 25
Risty v. *Chicago, R. I. & P. Ry. Co.*, 270 U. S. 378 15
Schenck v. *United States*, 249 U. S. 47 ..... 23, 28
Schneider v. *State*, 308 U. S. 147 ..... 23, 24, 29
Small Co. v. *American Sugar Ref. Co.*, 267 U. S. 233 27
Smith v. *Cahoon*, 283 U. S. 564 27
Smyth v. *Ames*, 169 U. S. 466 21
South Holland (*Village of*) v. *Stein*, 373 Ill. 472, 26 N. E. (2d) 868 24
Spielman Motor Sales Co. v. *Doge*, 295 U. S. 89 39
State ex rel. Wilson v. *Russell*, 1 So. (2d) 569 36
Sterling v. *Constantin*, 287 U. S. 378 ..... 20, 24
Stratton v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530 7
Stromberg v. *California*, 283 U. S. 359 ..... 22, 28
Swift & Co. v. *United States*, 276 U. S. 311 20
Terrace v. *Thompson*, 263 U. S. 197 ..... 21, 37
Thornhill v. *Alabama*, 310 U. S. 88 23
Truax v. *Raich*, 239 U. S. 33, 219 Fed. 273 21
United States v. *Cohen Grocery Co.*, 255 U. S. 81 ..... 22, 27
Vicksburg Waterworks v. *Vicksburg*, 185 U. S. 65 20
Watch Tower Bible & Tract Society v. *Bristol*, 24 Fed. Supp. 57 38
Watson v. *Buck*, 61 Sup. Ct. 962 38
Weeds, Inc., v. *United States*, 255 U. S. 109 27
Western Union Tel. Co. v. *Andrews*, 216 U. S. 165 21
Whitney v. *California*, 274 U. S. 357 ..... 23, 28
Work v. *Louisiana*, 269 U. S. 250 ..... 20, 25
Young, Ex parte, 209 U. S. 123 20
Zimmerman v. *Village of London* (Ohio), — Fed. Supp. — (April 25, 1941) 20, 25

STATUTES CITED.

Constitution of the United States, Fourteenth Amendment 4, 24, 27
Civil Rights Act of 1870 as amended (8 U. S. C. A. 43) 3, 21, 40
Judicial Code, Section 24(14), 28 U. S. C. 41, sub. 14 19

Page

Judicial Code, Section 238 (28 U. S. C. 345) 2
Judicial Code, Section 266 (28 U. S. C. 380) 2
Illinois Criminal Code (Revised Statutes of Illinois), Chapter 38, Sec. 471 ..... 2, 13
Session Laws of Minnesota 1925, Chap. 285, Sec. 1 ... 26

OTHER AUTHORITIES CITED.

22 Corpus Juris Secundum, Sec. 71 27
Vernon Centennial Edition of the Revised Statutes of Texas, 1936 43

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS, EAST SAINT LOUIS DIVISION

CECIL BEVINS, AUSTIN R. SIMCOX, NANCY M. SIMCOX, LOUIS F. WILSON, C. RAY LEIWE, CHARLES DAVIS, ERNEST SUMMERS, AND SAMUEL S. GOODIN,

Appellants,

vs.

"DOC" PRINDABLE, LOUIS P. ZERWECK, GEORGE REMNSNIDER, THOMAS LONIE, ANTHONY J. STOECKEL, TOM GRAM, JACK C. EDWARDS, TRAFTON DENNIS, LUKE BARNHILL, DWIGHT H. GREEN, GEORGE F. BARRETT,

Appellees.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

STATEMENT AS TO JURISDICTION OF UNITED STATES SUPREME COURT.

In compliance with Rule 12 (1) of the Supreme Court of of the United States, plaintiffs as appellants, file this, their statement disclosing the basis upon which they contend that

the Supreme Court has jurisdiction upon appeal to review the decree in question.*

(a) Statutory Provisions Sustaining the Jurisdiction.

Appellants rely upon Judicial Code, Section 238 (28 U. S. C. 345), and Judicial Code, Section 266 (28 U. S. C. 380), respectively, as amended, as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal, the decree appealed from having been made by a specially constituted three-judge court.

(b) The Statute of the State of Illinois the Validity of Which is Involved.

The statute of the State of Illinois, the validity of which is involved in this appeal, is Section 471 of Chapter 38 of the Illinois Criminal Code (Revised Statutes of Illinois), reading:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed, or

---

* An identical case, decided June 12, 1941, by the United States District Court for the Southern District of Indiana, Indianapolis Division, involving the validity of criminal statutes of that State applied in the same manner and under like circumstances as here involved, is that of *Trent et al.* v. *Hunt et al.*, which case also is appealed to the Supreme Court of the United States by Jehovah's witnesses acting through the same counsel as appears here. It will be docketed in this Court simultaneously with this case. Time of this Court will be saved by considering both cases together. See also the case of *Hannan et al.* v. *City of Haverhill et al.* (120 F. 2d 87 [CCA-1]), No. 211, October Term 1941 of this Court, now pending and undetermined.

religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $200."

The statute is set forth in the Opinion of the three-judge court for the Federal Eastern District of Illinois, annexed hereto as Appendix A.

(c) Timeliness of Appeal and the Decree Sought to be Reviewed.

The decree appealed from is a final judgment denying appellants' application for preliminary injunction, restraining the aforesaid statute on the grounds of its unconstitutionality on its face and as construed and applied. The facts were fully developed, and by stipulation of parties the hearing is treated as an application for a permanent injunction. The decree appealed from was made and entered June 17, 1941 (R. —). The court delivered an opinion on such date, which is anexed hereto as Appendix A (p. 45).

The petition for appeal is duly filed and presented within ninety (90) days from June 17, 1941, and is therefore timely.

(d) Nature of the Case and the Rulings of the Court.

This action was brought by appellants in their individual capacity, as well as in their representative capacity for that class of persons known as "Jehovah's witnesses", to redress the deprivation of appellants' civil rights of freedom of speech, freedom of press, and freedom to worship ALMIGHTY GOD, as provided for in the Civil Rights Act of 1870, as amended in 1871, and Section 24 (14) of the Judicial Code, otherwise known as 28 U. S. C. A. 41, sub. 14,

on the grounds that appellants had been deprived of such rights and had also been deprived of their liberty without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

The complaint alleged imminence and immediacy of irreparable injury and damage and repetitious enforcement of the aforesaid statute, and also alleged exceptional circumstances and great, grave and immediate danger of hopeless loss to the appellants. Complaint appears in the record at pages — to —.

The aforesaid original complaint was filed on January 14, 1941.

Appellees filed motions to dismiss the complaint on ground of insufficiency (R. —).

There were no answers filed by appellees as required by the rules and no denials of the allegations of the complaint.

Appellants asked for preliminary injunction *pendente lite* and on February 17, 1941, a specially constituted district court consisting of Circuit Judge Evan A. Evans, District Judge Walter C. Lindley and District Judge Fred L. Wham heard the application upon affidavits of the parties and witnesses, and on June 17, 1941, rendered a decree denying application (R. —), and on such date filed an Opinion stating as reasons therefor that the continuous arrests and prosecution of twenty or more of Jehovah's witnesses and threatening prosecution of hundreds of others was so inconsequential as not to be noticed by the court; that such did not constitute immediate injury and that appellants had an adequate remedy at law by defending and appealing the repeated prosecutions brought by appellees to the Supreme Court of Illinois. (R. —)

In the concluding paragraph of its opinion the trial court suggested that the case appeared to be as fully developed as it could be upon final hearing, and suggested that the

parties stipulate that the application for preliminary injunction be treated as a final hearing on application for permanent injunction for the purposes of this appeal. All parties have accordingly stipulated, and this appeal can be considered as on appeal from a final hearing. (R. —)

The material facts in evidence were undisputed. The appellees adroitly attempted to lead the court to believe that they were not threatening the appellants. However, this finds no support in the evidence, as we will point out later.

There are two different groups of State officials involved in this action against whom an injunction is sought: One group is the Saint Clair County (Illinois) officials, "Doc" Prindable, Louis P. Zerweck, George Remnsnider, Thomas Lonnie and Anthony J. Stoeckel. The other group is composed of the Saline County (Illinois) officials, Tom Gram, Jack C. Edwards, Trafton Dennis and Luke Barnhill. The first group will be hereinafter referred to as Saint Clair County officials, and the other group as the Saline County officials. The Governor, Dwight H. Green, and the Attorney-General, George F. Barrett, are necessary parties defendant because the validity of the State statute is attacked and they are on that account made parties to the suit.

The undisputed evidence showed that Jehovah's witnesses are not a sect, cult or religion, but that they are true and obedient servants of Almighty God, Jehovah, following exclusively in the footsteps of Christ Jesus and performing the will of Almighty God even as Jesus did; that *religion* is the doing of anything that is contrary to the will of Jehovah God; that a cult is a system of religious belief, the practicing of ceremonies and traditions of men in an organized body; that a sect is a religious organization of persons following a particular creature in their belief and practicing a specific religion based on the traditions of men;

that Jehovah's witnesses are persons who are entirely devoted to Jehovah God and His Kingdom, and who are diligent and faithful in carrying out His orders as commanded by Him in the Bible, by preaching the gospel of God's Kingdom, as ordained ministers, by presenting to the people on the public streets and at their homes, literature explaining the Bible prophecies, which is God's revealed Word; that the literature carried by them shows that religion is a snare employed by the Devil, through selfish men, to prevent the people from seeing the TRUTH concerning Jehovah God's purposes toward mankind; that the literature further shows that the time is very near at hand when Jehovah God is about to destroy Satan's entire organization, invisible and visible, including commercial, political and ecclesiastical elements of the present world, and all persons who willingly support said institutions; that such destructive work will be done by Jehovah's invisible forces in the "battle of that great day of God Almighty" at Armageddon, and is to be followed by complete establishment of a perpetual government to be ruled over by Christ Jesus, known as The THEOCRACY, which will bring peace, prosperity, happiness and everlasting life unto all persons who willingly obey all commands of Jehovah God; that this work done by Jehovah's witnesses is a kind warning to the people to abandon religion and Satan's organization and live, or remain and die.

The literature also shows that true servants of Almighty God are to keep themselves separate from the present world and that religion is demonism, in that it teaches false, demon-inspired doctrines, such as the inherent immortality of all human creatures, the trinity theory of three gods in one, and one in three, the purgatory and eternal-torment-hell-fire doctrines, death-bed repentance, and many other God-dishonoring doctrines which find no support in the

inspired Word of God, the Bible, and which are contrary to the plain commands set forth in the Bible.

The literature and appellants do not advocate that the creature man should commit any act or acts of force or violence to bring about the destruction of the governments of the world because such destruction is foretold in the Divine prophecy as due to be done by the Lord Jesus Christ, the Executioner of the Most High God, JEHOVAH, and by his accompanying host of powerful, invisible angels, at the time appointed by God, which is near at hand. The literature submits the conclusive proof that the head and leaders of the Roman Catholic Hierarchy engage in wilfully and deliberately fleecing the unsuspecting people of their hard-earned money and impose upon the subjects of that organization the aforementioned damnable theories and teachings. The literature conclusively submits that the Roman Catholic Hierarchy is in a league with Fascists and Nazis and in a conspiracy to gain political control of the entire world and of all the nations of the world and with the avowed purpose of destroying the constitutional rights and liberties of the people of this land and to establish totalitarian rule in America.

The above described contents of the literature was objected to by the appellee-officials and some of the citizens who complained to appellees. But the work of Jehovah's witnesses in preaching the gospel of God's Kingdom cannot be discontinued in any community, regardless of threats of interference of any kind, for if they refuse to declare the truth as shown in the Word of Almighty God and to proclaim His written warning to the people there will be required of them the lives of those who because of failing to receive the warning lost their lives. Therefore Jehovah's witnesses must "obey God rather than men".—Acts 5:29.

The trial court found that the literature published by the

Watchtower Bible and Tract Society had been distributed for many years in Saint Clair County and Saline County by Jehovah's witnesses

> "acting as full time and part time ordained ministers of the gospel. The full time representatives of the Society acting as ordained ministers depend for their livelihood upon the income which they receive in the way of contributions from the persons to whom they distribute the said literature. Part time ordained ministers have other vocations which they pursue. Some of them sell Bibles also as they distribute the Watchtower literature. From time to time Jehovah's witnesses from surrounding communities in Illinois and Missouri assemble with those in St. Clair County and work St. Clair County and Belleville in large groups. As many as five hundred are affected by the situation in St. Clair County of which complaint is made. It is their frequent practice to assemble and work together in numbers in the various communities where they work."

See No. 17 of Special Findings of Fact, Appendix A annexed hereto.

The basis of the convictions prosecuted by the appellees in both Saline and St. Clair counties is illustrated in the following excerpts from recent Watchtower publications as indicated after each, all of which quoted excerpts the trial court set forth in its opinion, to-wit:

Excerpt from Appellees' Exhibit No. 1, booklet entitled "Judge Rutherford Uncovers Fifth Column", pages 22, 23:

> "Why not let the public press demand of Congress an investigation of the cellars and crypts of the Catholic cathedrals in the United States and prove to the public whether or not they have stored away a great amount of arms and ammunition to use against the government?

"Why not the Dies Committee go after the Hierarchy and the Nazis? If the Hierarchy deny that they have a large amount of guns and ammunition stored, then they should not object to being investigated. If they do vigorously deny it, that is the best reason why an investigation should be had. There are many persons in the United States who have worked in building these crypts or cellars, and others who have helped unload what appeared to be piano boxes, which were filled with rifles and are stored in these crypts. I am not interested in carrying out such an investigation, because my time and energy must be used to advertising God's Kingdom, the only means of blessing of humankind.

"If the public press is so interested in getting at the facts, then institute a search and investigation disclosing who are the real enemies of American institutions. The time will come in the very near future when the Lord Himself will pull the shroud completely off those hiding behind the 'refuge of lies' and disclose a great and hypocritical religious institution that has defamed His name and devoted its power to unrighteousness."

Excerpt from Appellees' Exhibit No. 2, booklet entitled "Warning", pages 52, 53:

"• • • The Roman Catholic Hierarchy operates from Vatican City as a religious organization, but is in fact a political organization united with Fascists and Nazis, and is endeavoring to gain control of all nations of earth.

"From whence came that monstrosity, and why has it now appeared? It is the child of the Devil brought forth to wreck the world and to plunge humanity into destruction. Its purpose is to rule or ruin. It first attempts to rule, and, failing in that, it brings ruin upon the people. Already it has gained control of Europe and is moving to grab the British Empire and the United States of America. It has its trusted agents in every land and in every strategic position. In every department of the governments it has its key men.

In almost all of the metropolitan newspapers it has placed its trusted agents in important positions to see that the public does not receive the truth."

Excerpt from Appellees' Exhibit No. 3, booklet entitled "Face the Facts", pages 30, 31:

"• • • The democracies of earth, and particularly Great Britain and America, are in great danger of totalitarian rule. The Roman Catholic Hierarchy of Authority, the Fascists and the Nazis are conspiring together to gain control and rule all the nations by dictators. • • •

"• • • the newspapers refuse to publish anything about the kingdom for fear of shocking the religious susceptibilities of the Roman Catholic Hierarchy and their allies. Such publication would interfere with the religious racket. • • • Religionists have an ambitious desire to rule the world in the place and stead of God and Christ. Religion is therefore a snare and a racket, and the Lord's kingdom will do away with religion and all fraudulent schemes."

Excerpt from Appellants' Exhibit No. 11, Kingdom News, Vol. 1, No. 6, July 1940, page 1, column 3:

"IS THIS SPREADING HATE?

"Why mention these things? Hierarchy leaders and religionists who choose to take orders from them say that Jehovah's witnesses spread hate. To every thoughtful, honest and God-fearing person Jehovah's witnesses say: In obedience to the command of ALMIGHTY GOD (Isaiah 58:1; Isaiah 54:17) we publish these stirring facts. For what purpose? To aid every humble, order-loving person to discern the difference between religion and Christianity. These stirring facts we publish to aid such persons to FORSAKE RELIGION and instead LEARN AND OBEY THE LAWS OF ALMIGHTY GOD written in His Word, the Bible, that they may live under God's kingdom."

See "Special Findings of Fact", No. 19, of the trial court, in which all the foregoing quoted excerpts are set forth.

That on Sunday, June 23, 1940, the Saline County officials stopped Jehovah's witnesses from circulating a petition among the citizenry protesting against the wrongful cancellation of a contract for use of the Ohio State Fair Grounds by Jehovah's witnesses, and on the same night the regular meeting hall of Jehovah's witnesses was padlocked by the St. Clair County officials, and Jehovah's witnesses were requested to appear before the George Hart Post No. 167 of the American Legion following which appearance the appellee Jack Edwards, Deputy Sheriff, acting under the advice and consent of the other Saline County officials, caused to be published in the local Harrisburg (Saline County), Illinois, newspaper, a resolution adopted by the George Hart Post No. 167 of the American Legion at Harrisburg, Illinois, as follows:

> "WHEREAS, Jehovah witnesses are distributing literature in the City of Harrisburg and surrounding territory and playing records, stating publicly that they will not salute the American Flag and are publicly urging others to join them in the same belief;
>
> "WHEREAS, Jehovah witnesses are against taking up arms in defense of this country in the event of armed invasion and are asking others to join them in the same belief;
>
> "WHEREAS, the extension and dissemination of such doctrines and beliefs are detrimental to the best interests of the State and Nation during this period of unrest and critical times;
>
> "THEREFORE BE IT RESOLVED by the George Hart Post No. 167 of the American Legion, Harrisburg, Illinois, that in the future no Jehovah's witness or any other sect having similar beliefs, shall in the future distribute any literature or play any recordings in the City of Harrisburg or surrounding territory, stating publicly that they will neither salute the American Flag nor take up arms

in the defense of this country in the event of an armed invasion.

"BE IT FURTHER RESOLVED that no Jehovah witnesses shall in the future solicit any further membership to their organization, either in the City of Harrisburg or any surrounding territory.

"BE IT FURTHER RESOLVED that copies of this Resolution be mimeographed and supplied to all of the churches of Harrisburg, all civic organizations and all union locals and to all other organizations and societies, as well as to the Chief of Police and Sheriff of Saline County, for their information, support and cooperation."

See affidavit of appellant Cecil Bevins (R. —).

That following such circulation of said resolution, appellant Bevins while engaged in the preaching of the gospel, secured the permission and consent of a local citizen to play a phonograph record and deliver to said citizen seven booklets, including the booklet entitled "Judge Rutherford Uncovers Fifth Column", all of which was with the consent of such citizen. Thereafter the booklets were turned over to appellees, the Saline County officials, and appellant Bevins was arrested, tried under the aforesaid statute and convicted and fined the sum of $100 and required to post bond in the amount of One Thousand ($1,000) Dollars in order to perfect his appeal. The undisputed evidence showed that there was no argument or disturbance whatsoever at the time of the presentation of such literature or at any time thereafter. Subsequently, the Saline County officials arrested other of Jehovah's witnesses, tried and convicted them for distributing KINGDOM NEWS No. 6, a Watchtower periodical, on the public streets of Harrisburg and forced them to post excessive bonds in order to perfect their appeals. In every case, the undisputed evidence showed that there was no argument, no truculent conduct or misbehavior or offensive statements

made by any of Jehovah's witnesses and that there was no breach of the peace or threatened breach of the peace.

This is conclusively proved by the affidavit of appellee Trafton Dennis, State's Attorney, who, among other things, says:

> "• • • they stated to me that Cecil Bevins appeared in the home of J. V. Sullivan on two occasions, played phonograph records to which they paid no attention, other than to note they were defamatory and scandalous of other people and religions; • • • these [complaining] witnesses further testified that they resented the distribution of the books and resented the language and recording of the records played on the phonograph in their home." (R. —.)

As results of the organized interferences and arrests of Jehovah's witnesses, their meeting hall closed, the Bible studies disbanded, distribution of literature was frustrated and stopped. "That the arrests and threats of arrest and threats to prosecute all of Jehovah's witnesses under Section 471 of Chapter 38 of the Illinois Criminal Code has frightened a number of Jehovah's witnesses and has caused many to discontinue attending Bible studies and to discontinue the work of preaching the gospel." (See Affidavit of Cecil Bevins, R. —.)

Also many were boycotted in their business and forced into bankruptcy, and the others were discharged from their employment as results of the pressure exercised against them by the appellees.

At the trial of Bevins, a Catholic priest appeared and testified against him.

That such interferences and conduct has not discontinued but is threatened to continue unless this Court reverses the trial court and grants the injunction.

In St. Clair County on June 8, 1940, a Catholic priest named Huff, of St. Theresa's Church on Lebanon Avenue,

Belleville, Illinois, walked up to one of Jehovah's witnesses and demanded that he discontinue his work and said, "If you don't you will find out about that later, young fellow." And fifteen minutes later the police came up and took him in for questioning, and advised that if the street distribution of the Watchtower literature continued that the arrests therefor would continue. Upon interviewing the Mayor and Chief of Police, they threatened to continue to enforce the statute and arrest Jehovah's witnesses.

On June 15, 1940, nine of Jehovah's witnesses, five men and four women were arrested and held in jail for 49 hours without bond and finally released in bond of $100 each to appear for trial on June 27th before the Justice of the Peace. That they were tried and convicted and appealed their cases. Later one of Jehovah's witnesses was arrested for circulating a petition protesting cancellation of the Columbus (Ohio) State Fair Grounds contract with Jehovah's witnesses and was charged with a violation of the statute in question, placed under $2,500 bond, which was raised with considerable difficulty. Thereafter on August 15, 1940, Jehovah's witnesses were again arrested for distributing the literature on the streets by the St. Clair County officials and held in jail for many hours without bond, and four were finally released on $2,500 bond each or total bail of $10,000. That also in August an old man, seventy-three years of age, a full-time publisher of the gospel, an ordained minister, and some innocent women were arrested while going from house to house in the rurals of St. Clair County playing the phonograph records entitled "Perilous Times" and "Instruction", which contain no attack on any religion whatsoever and were charged with a violation of this statute and held on excessive bail pending trial.

That on December 28, 1940, two of Jehovah's witnesses were arrested, while going from house to house with only the King James Version of the Bible and a phonograph

record containing a discussion of fundamental doctrines without attack on any religion, and held in jail until released on $200 bond each.

That the St. Clair County officials threaten to continue to arrest all of Jehovah's witnesses, and have a standing order to the police officials and sheriff and deputy sheriffs to arrest Jehovah's witnesses found distributing literature and playing the phonograph records, and to charge them with an alleged violation of the aforesaid statute and that such officials have stated repeatedly that they will arrest and prosecute Jehovah's witnesses to the full extent of the law as long as Jehovah's witnesses continue their work in the county.

A number of affidavits were filed by the officials of both St. Clair and Saline counties, a sample of which is demonstrated in the affidavit of Louis P. Zerwick, State's Attorney for St. Clair County, quoted from as follows:

> ". . . It is my opinion that the activities, conduct and practices of the Jehovah's witnesses in distributing and circulating literature published by Watchtower Bible and Tract Society publicly on the streets and at other and numerous occasions on uninvited personal calls at the homes of citizens of the City of Belleville, Illinois and St. Clair County, Illinois, containing information and opinion which exposes the citizens of all creeds or religions to contempt, derision and obloquy, presents a situation to the law enforcing officers of the County of St. Clair, Illinois, and the City of Belleville, Illinois, in which there is a clear, present and immediate danger and likelihood of acts prejudicial to the public welfare and productive of social injuries, acts which are criminal offenses under the law of the State of Illinois." (R. —.)

The officials of Saline and St. Clair Counties and their respective State's Attorneys file affidavits that they will prosecute all cases where it is their opinion that the litera-

ture constitutes a violation of the statute and will continue to do so until the highest court of the State of Illinois has declared the statute unconstitutional.

Not one official denied making the threats specifically charged against them in a number of affidavits filed by appellants. Not one of the appellees denied the express allegations of the complaint that they threatened to enforce the statute.

The repeated arrests of Jehovah's witnesses under this statute show appellees' intention to enforce the same, and that they are still of the same opinion that the literature distributed constitutes a violation of the statute and that they will continue to arrest.

In every instance where an arrest has been made the undisputed evidence shows conclusively that there was no controversy between Jehovah's witnesses and any citizen; that no argument resulted, no breach of the peace resulted, or danger of breach of the peace that was clear and present.

The St. Clair and Saline County officials base their fear of violence in the community upon news reports of mob violence against Jehovah's witnesses throughout other parts of the United States and that they felt it their duty to arrest Jehovah's witnesses to avert any possibility of mob violence in their community. The undisputed evidence fails to show that Jehovah's witnesses were the cause of any of such mob violence. However, the undisputed evidence does show that the mob violence was committed against Jehovah's witnesses.

The undisputed evidence shows that as a result of such continued prosecution in both Saline and St. Clair counties, the work of Jehovah's witnesses has been frustrated and stopped; that many have been browbeaten and forced to fall away from the faith and discontinued their work as ministers of the gospel; that they have been greatly damaged and burdened with excessive bond and lost

their liberty and name and fame in the community and have otherwise suffered great immediate and irreparable injury and loss of their civil rights and that the conduct on the part of the officials in St. Clair and Saline counties has practically stopped completely the work of Jehovah's witnesses.

That Jehovah's witnesses have no adequate remedy at law and that the statute, both on its face and as construed and applied, is unconstitutional and void and that it is necessary that Jehovah's witnesses be granted the injunction in order to redress the deprivation of their civil rights.

Sample copy of the complaint filed against Jehovah's witnesses is as follows:

"STATE OF ILLINOIS, St. Clair County, ss.:

"The complaint and information of R. V. Gustiv, Ass't State's Attorney in said County, made before Anthony J. Stoeckel, Esquire, one of the Justices of the Peace in and for said County, who being duly sworn, upon his oath says that Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers on, to-wit, the 31st day of August, 1940, at the County aforesaid then and there unlawfully advertise, sell or offer for sale a certain sketch which publication portrays depravity, criminality, unchastity or lack of virtue of a class of citizens belonging to the Roman Catholic religion, which said publication exposes the citizens of said religion to contempt, derision or obloquy and which is productive of breach of the peace or riot contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

"That this complainant has just and reasonable grounds to believe, and does believe that the said Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers committed said offense, and therefore pray that [same named offenders] may be arrested and dealt with according to law.

[Signed] R. V. GUSTIV.

"Subscribed and sworn to before me this 31st day of August, 1940.

[Signed] ANTHONY J. STOECKEL,
J. P."

Others were charged in similar form. For further detail see the affidavits of the parties and the trial court's special findings of fact.

The trial court denied the injunction because it considered that the situation presented failed to show any need of the intervention of the court of equity by way of injunction and that no substantial damage was shown and that Jehovah's witnesses had an adequate remedy at law. See the trial court's opinion, Appendix A.

The trial court also said that appellants could go elsewhere to preach the gospel:

> "• • • Plaintiffs are at liberty, so far as the evidence shows, to propagate their beliefs, distribute their literature and receive contributions anywhere outside of St. Clair and Saline Counties."

See Opinion, Appendix A, annexed hereto.

While not passing on the statute, the court discussed the validity of the statute and infers that the statute is valid both on its face and as construed and applied.

Appellees contend that it is unnecessary that they show a breach of the peace or an immediate threatened breach of the peace because the statute does not require a breach of the peace; that the convictions are based upon that section of the statute which prohibits the distribution of literature that "portrays depravity, unchastity, or lack of virtue of a class of citizens of any race, color, creed or religion" or "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy." They contend that such

part of the statute which reads, "or which is productive of breach of the peace or riots," is an alternative provision and not a conjunctive provision. It is manifest that the lower courts of Illinois so construe the statute because in the several convictions in St. Clair County and the convictions in Saline County, the undisputed evidence showed no argument, truculent conduct or threatened violence or threatened breach of the peace whatsoever.

The sole basis of conviction was the contents of the literature as within the provisions of the statute.

In the petition for appeal and the assignments of error filed with this statement, appellants complain of the final judgment of the United States District Court for and on account of the grounds hereinafter set forth.

(e) Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States.

Jurisdiction of Subject Matter.

The trial court held that it had jurisdiction of the subject matter and the parties by virtue of Section 24 (14) of the Judicial Code (28 U. S. C. A. 41, sub. 14) and the Civil Rights Act of 1870, amended in 1871. See Opinion, Appendix A. Accordingly, that question need not be discussed.

First.

The trial court committed reversible error in holding that no extraordinary circumstances or danger of great and immediate irreparable loss and injury were shown requiring an injunction restraining appellees from arresting and prosecuting appellants under the criminal statute in question, because an irreparable and immediate injury from constant threatened arrests was shown.

Second.

The trial court committed reversible error in failing to hold that it is necessary for the protection of appellants' and other of Jehovah's witnesses' rights that it enjoin State officers-appellees from instituting criminal actions under the criminal statute alleged to be unconstitutional on its face and as construed and applied to appellants and other of Jehovah's witnesses, because immediate and irreparable injury is shown.

Hague v. *C. I. O. et al.*, 307 U. S. 496;
Hague v. *C. I. O. et al.*, 101 F. (2d) 774, 785, 786, 790, 791;
Ex parte Young, 209 U. S. 123, 162-165;
Pierce v. *Society of Sisters*, 268 U. S. 510, 535-536;
Swift & Co. v. *United States*, 276 U. S. 311;
Vicksburg Waterworks v. *Vicksburg*, 185 U. S. 65, 82;
Greene v. *Louisville & I. R. Co.*, 244 U. S. 499, 506-507, 520-521;
Sterling v. *Constantin*, 287 U. S. 378, 393, 403-404;
Fidelity & Deposit Co. v. *Tafoya*, 270 U. S. 426, 434;
Work v. *Louisiana*, 269 U. S. 250, 254;
Colorado v. *Toll*, 268 U. S. 228, 230;
**Reid et al.* v. *Borough of Brookville (Pa.) et al.*, 39 Fed. Supp. 30;
**Kennedy et al.* v. *City of Moscow (Idaho) et al.*, 39 Fed. Supp. 26;
**Zimmerman et al.* v. *Village of London (Ohio)* (April 25, 1941), — Fed. Supp. —;
**Beeler et al.* v. *Smith et al. (Ky.)* (June 4, 1941), — Fed. Supp. —, Appendix B hereof;
Cline v. *Frink Dairy Co.*, 274 U. S. 445;
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317;

[* Indicates Jehovah's witnesses case.]

Adams v. *Tanner*, 244 U. S. 590;
Kennington v. *Palmer*, 255 U. S. 100;
Truax v. *Raich*, 239 U. S. 33, 219 Fed. 273;
Dobbins v. *Los Angeles*, 195 U. S. 223, 241;
Terrace v. *Thompson*, 263 U. S. 197;
**Oney et al.* v. *City of Oklahoma City et al.* (June 9, 1941), — F. (2d) —;
Ludwig v. *Western Union*, 216 U. S. 146;
Western Union Tel. Co. v. *Andrews*, 216 U. S. 165;
Ex parte Bransford, 310 U. S. 354, 361;
Civil Rights Act 1870, *amended* 1871.

Third.

The trial court committed reversible error in holding that Jehovah's witnesses have an adequate remedy at law because the fact that the appellants and the score of other individuals concerned have the right to urge their defense of the unconstitutionality of the statute, both on its face and as construed and applied, in the trial courts and on appeal from convictions to the Supreme Court of Illinois and from that court ultimately to this Court by certiorari or appeal. The court should have held that such does not constitute an adequate remedy at law equivalent to the relief asked for here in equity.

Stratton v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530, 534;
Risty v. *Chicago, R. I. & P. Ry. Co.*, 270 U. S. 378, 388;
Smyth v. *Ames*, 169 U. S. 466, 516-517;
Terrace v. *Thompson*, 263 U. S. 197, 214-216;
American Life Ins. Co. v. *Stewart*, 300 U. S. 203, 214-216;
Railroad & Warehouse Comm. of Minn. v. *Duluth St. Ry. Co.*, 273 U. S. 625, 628;
Petroleum Exploration v. *Public Service Comm.*, 304 U. S. 209;

**Reid et al.* v. *Borough of Brookville (Pa.) et al.*, 39 Fed. Supp. 30;

New Hampshire Gas & Elec. Co. v. *Morse*, 42 F. (2d) 90, 93.

Fourth.

Because the activity of Jehovah's witnesses is a constant and continuing activity of distribution of literature with each act of distribution contributing, according to the view of the appellees, a separate alleged violation of the statute, the trial court committed reversible error in failing to hold that the acts and conduct of the appellees in interfering with appellants is a continuing act and violation of appellants' constitutional rights constantly going on and which cannot be compensated in money damages. The court should have held that such is the best possible reason for interference by a court of equity.

Nashville, C. & St. L. Ry. Co. v. *McConnell*, 82 Fed. 65, 70;

Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479;

Johnson v. *Wells Fargo*, 239 U. S. 234;

Pierce v. *Society of Sisters*, 268 U. S. 510, 535-536.

Fifth.

The trial court committed reversible error in refusing to declare the Illinois State statute in question void because of vagueness and indefiniteness permitting denial of liberty without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

Herndon v. *Lowry*, 301 U. S. 242;

Stromberg v. *California*, 283 U. S. 359;

United States v. *Cohen Grocery Co.*, 255 U. S. 81;

Lanzetta et al. v. *State*, 306 U. S. 451.

[* Indicates Jehovah's witnesses case.]

Sixth.

The trial court committed reversible error in refusing to declare the Illinois State statute in question void on its face because it deprives appellants and all other persons of their right of freedom of speech, freedom of press and freedom to worship Almighty God, contrary to the Fourteenth Amendment to the United States Constitution.

Cantwell v. *Connecticut*, 310 U. S. 296;
Near v. *Minnesota*, 283 U. S. 697;
**Schneider* v. *State*, 308 U. S. 147;
Thornhill v. *Alabama*, 310 U. S. 88;
Grosjean v. *American Press Co.*, 297 U. S. 233;
De Jonge v. *Oregon*, 299 U. S. 353, 363;
Hague v. *C. I. O. et al.*, 307 U. S. 496;
Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479;
Fiske v. *Kansas*, 274 U. S. 380;
Schenck v. *United States*, 249 U. S. 47, 52;
Herndon v. *Lowry*, 301 U. S. 242;
Whitney v. *California*, 274 U. S. 357.

Seventh.

The trial court committed reversible error in refusing to declare the Illinois State statute in question unconstitutional and void as construed and applied by appellees, who act in excess of their authority and in an unconstitutional manner, because the undisputed evidence and the findings of fact by the trial court show that the literature circulated by appellants does not violate the law of morals, invade the property rights of others or imperil the safety of the state by clear and present danger or by force and violence, thus denying appellants their rights of assembly, speech, press and freedom to worship Almighty God according to the dictates of their consciences and as commanded by

---

[* Indicates Jehovah's witnesses case.]

Jehovah God, all contrary to the due process clause of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1870, as amended in 1871.

* *Cantwell* v. *Connecticut*, 310 U. S. 296;
* *Schneider* v. *State*, 308 U. S. 147;
* *Lovell* v. *Griffin*, 303 U. S. 444;
Fiske v. *Kansas*, 274 U. S. 380;
De Jonge v. *Oregon*, 299 U. S. 353, 363;
Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479;
Hague v. *C. I. O. et al.*, 307 U. S. 496; 101 F. 2d 774, 785-786, 790, 791;
Near v. *Minnesota*, 283 U. S. 697, 713-716;
Grosjean v. *American Press Co.*, 297 U. S. 233.

Eighth.

The trial court committed reversible error in failing to hold that a valid and constitutional statute becomes invalid when wrongfully construed so as to deny constitutional rights and the enforcement of a constitutional statute in an unconstitutional manner can be enjoined where injury is irreparable and immediate.

* *Oney* v. *City of Oklahoma City et al.*, (June 9, 1941), — F. 2d —.
* *South Holland* (*Illinois*) v. *Stein*, 26 N. E. 2d 868;
* *Kennedy et al* v. *City of Moscow* (*Idaho*) *et al.*, 39 F. Supp. 26;
Hague v. *C. I. O. et al.*, 307 U. S. 496; 101 F. 2d 774, 785, 786, 790, 791;
Concordia Fire Ins. Co. v. *Illinois*, 292 U. S. 535, 545;
Greene et al. v. *L. & T. Ry. Co.*, 244 U. S. 499, 506-508, 520-521;
Sterling v. *Constantin*, 287 U. S. 378, 393, 403-404;

[* Indicates Jehovah's witnesses case.]

Work v. *Louisiana,* 269 U. S. 250, 254;
Colorado v. *Toll,* 268 U. S. 228, 230;
* *Reid et al.* v. *Borough of Brookville* (*Pa.*) *et al.,* 39 F. Supp. 30;
* *Zimmerman et al.* v. *Village of London* (*Ohio*), (April 25, 1941) — F. Supp. —.

Ninth.

The trial court committed reversible error in failing to hold that the statute was entirely beyond the police power of the state and beyond the legislature's province to enact such a law because there can be no libel of persons as a class.

People v. *Edmonson,* 4 N. Y. S. 2d 257; 168 Misc. 142;
People v. *Downer,* 6 N. Y. S. 2d 566.

(f) Discussion of the State Statute in question and the Cases Relied Upon by Appellees and Trial Court.

At the outset we invite attention of this Court to the fact that the statute on its face is vague and indefinite and so flexible in its terms as to permit its application to prohibit the most innocent acts, because it is impossible to determine what is portraying depravity, unchastity or lack of virtue of the citizens of any race, color, creed or religion or exposing such to contempt, derision or obloquy. What might be such to one person would not be to another, because it would depend entirely upon the opinions of the persons hearing the words spoken; thus the enforcement of the statute is left to the whim of the individual hearing or reading the language which varies with every individual, depending upon his susceptibilities.

This particular character of legislation was outlawed in the case of *Near* v. *Minnesota,* 283 U. S. 697, because of vagueness and ambiguity. There was involved Minne-

sota statute chapter 285, Session Laws of Minnesota 1925, Sec. 1:

> "Any person who as an individual or as a member or employee of a firm, or association or organization, or as an officer, director, member or employee of a corporation, shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away (a) an obscene, lewd and lascivious newspaper, magazine, or other periodical, of (b) a *malicious, scandalous* and *defamatory* nature, is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined as provided in the act."

The complaint charged the defendant with printing a malicious, scandalous and defamatory newspaper. There was no question that the columns referred to in the complaint were malicious, scandalous and defamatory. The defendant alleged that the statute was unconstitutional as it abridged the right of freedom of the press as guaranteed by the Fourteenth Amendment, and that therefore the complaint, since it issued under an invalid statute, was void. *This court held the statute to be invalid and void on its face,* as it abridged the right of freedom of the press.

See also *Herndon* v. *Lowry,* 301 U. S. 242; *Lanzetta* v. *State,* 306 U. S. 451; *Connally* v. *General Constr. Co.,* 269 U. S. 391, 392. In the *Lanzetta* case, this Court said:

> "Persons may not be required at peril of life, liberty or property to speculate concerning the meaning of a penal statute, but *all are entitled to be informed concerning what the state commands or forbids.*"

And in the same case, Butler, J., citing from *Connally* v. *General Constr. Co., supra,* said:

> "And a statute which either forbids or requires the doing of an act so vague that men of common intelligence must necessarily guess at its meaning and differ

as to its application, violates the first essential of due process of law."

In support of this proposition we make reference to 22 Corpus Juris Secundum 71, *Detroit Creamery et al.* v. *Kinnan et al.*, 264 F. 845; *Smith* v. *Cahoon*, 283 U. S. 564; *Dials* v. *Commonwealth*, 192 Ky. 440; 233 S. W. 888; and *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233, where enforcement of a United States statute was voided because of the fact that the statute was too vague, indefinite and indeterminate. It was a statute prohibiting excess profits on necessaries. This Court cited the case of *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, and *Weeds, Inc.* v. *United States*, 255 U. S. 109, and from the Cohen Grocery case quoted as follows:

> "Observe that the section forbids no specific or definite act. It confines the subject matter of the investigation which it authorizes (by court and jury after the act) to no element essentially inhering in the transaction to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against."

The statute is void on its face because it prohibits, abridges and denies freedom of speech and of press and of worship of Almighty God, contrary to the Fourteenth Amendment to the United States Constitution. See *Near* v. *Minnesota, supra.*

In *De Jonge* v. *Oregon*, 299 U. S. 353, 363, the statute in question was held by this Court to be so broad that it abridged the freedom of speech and of press and of the right of peaceable assembly and thus violated the due process clause of the Fourteenth Amendment. The statute there involved reads as follows: "Any person * * * who shall preside at or conduct or assist in conducting any as-

semblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrines of criminal syndicalism or sabotage is guilty of a felony." The defendant in that case spoke at a Communist meeting.

See also *Stromberg* v. *California*, 283 U. S. 359, and *Grosjean* v. *American Press Co.*, 297 U. S. 233.

In *Schenck* v. *United States*, 249 U. S. 47, 52, Mr. Justice Holmes stated the matter:

> "The question in every case is whether words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent."

In *Whitney* v. *California*, 274 U. S. 357, this Court, speaking through Mr. Justice Brandeis, said:

> "The fact that speech is likely to result in causing some violence * * * is not enough to justify its suppression."

In the case of *People* v. *Downer*, 6 N. Y. S. 2d 566, Downer was charged with breach of the peace under the New York statute because he distributed literature which very vigorously castigated the Jewish race and held the Jews up to contempt, derision and obloquy. This distribution was done at Coney Island, in the heart of the Jewish neighborhood of New York City. The court refused to convict him and acquitted him in spite of the complaint of the Jews on account of the fact that if he were so convicted it would be a violation of the United States Constitution.

The trial court says in its Opinion that "plaintiffs are at liberty, so far as the evidence shows, to propagate their beliefs, distribute their literature and receive contributions anywhere outside of St. Clair and Saline counties." This statement is entirely foreign to American

liberty and was condemned in the case of *Hague* v. *C. I. O. et al.*, 307 U. S. 496, and also in the case of *Schneider* v. *State*, 308 U. S. 147, as follows:

> "But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

The trial court also criticized in its Findings of Fact and Opinion that Jehovah's witnesses attack religion; however, in this the trial court's ruling is directly contrary to this Court's holding in *Cantwell* v. *Connecticut*, 310 U. S. 296, which is directly in point here because the facts are identical. The undisputed evidence in the Cantwell case showed as follows:

> "We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.
>
> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.
>
> "The essential characteristic of these liberties is, that under their shield many types of life, character,

opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal rights to the exerise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

"Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question."

In the case at bar the undisputed evidence shows also that there was no truculent conduct, no actual threats of violence or any other improper conduct on the part of Jehovah's witnesses. In this connection we should like to call the Court's attention to the case of *Dearborn Publishing Co.* v. *Fitzgerald*, 271 F. 479, where the court overruled the same argument that the trial court relied upon in this case. The Circuit Court sustained a prayer for an injunction in favor of the Dearborn Publishing Company, restraining the mayor and other officials of Cleveland, Ohio, from arresting the street distributors of the *Dearborn Independent*, which contained articles of a vicious and scurrilous nature against the Jewish race. The defendants in that case arrested and threatened the arrest of the distributors because there had been mob violence and threatened

mob violence between those of the Jewish race and their sympathizers and the distributors of the literature. The defendants in that case, as here, resorted to an ordinance that prohibited the distribution of the literature that might tend to or cause a breach of the peace. The United States District Court granted the injunction. As is contended by defendants-appellees here, the defendants in that case contended that it was necessary to make the arrests in order to prevent disturbance and to preserve "law and order". However, such contention of public convenience was held not to justify the suppression of the right of freedom of the press, the court saying:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. * * * If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed."

In the Findings of Fact, the trial court says:

> "(21) * * * The county and city officials, including all the defendants herein who are officials of said county and city, knew from reports of officials and newspaper accounts that as a result of the distribution of similar literature by Jehovah's witnesses in Litchfield, Illinois, a neighboring city, approximately fifty-five miles from Belleville, a serious riot had taken place in which a mob estimated at one thousand persons assembled, violent assaults and sluggings occurred, many persons were injured and much property damage

resulted and that to quell said riot it was necessary to call out the Illinois State Police Riot Squad. They also knew from report that the distribution of said literature by Jehovah's witnesses had caused mobs and rioting in other localities and honestly believed there was immediate danger of riot, breach of the peace and personal injury to said Jehovah's witnesses and others as a result of their distribution of their literature in Belleville and St. Clair County. Whereupon, members of the police of the city of Belleville, namely, William H. Klotz, Lincoln Luke, George Smith, John West, John Smith and Walter Magin, were ordered to investigate the activities of said Jehovah's witnesses in the city of Belleville. After such investigation had been made a considerable number of Jehovah's witnesses were arrested and detained by said officials with the honest belief that their activities in distributing the literature aforesaid was in violation of section 471, chapter 38 of the Revised Statutes of the State of Illinois. Also with the honest belief that riots, disturbances of the peace were imminent and that the safety of persons and property in the community was seriously endangered due to said activities of Jehovah's witnesses."

There is no evidence whatsoever that Jehovah's witnesses instigated any violence. The undisputed evidence shows that they innocently distributed literature and did not incite anyone to engage in unlawful acts. In connection with this mob violence against Jehovah's witnesses, referred to by the trial court in the above quoted paragraph "(21)" of its Findings of Fact, we invite the Court's attention to the statement of United States Solicitor General Francis Biddle, in his address of June 16, 1940, broadcast over a coast-to-coast network of the National Broadcasting Company, concerning these very occurrences referred to by the trial court. Said Mr. Biddle:

"• • • *Jehovah's witnesses have been repeatedly set upon and beaten. They had committed no crime;*

but the mob adjudged they had, and meted out mob punishment. The Attorney General has ordered an immediate investigation of these outrages.

"The people must be alert and watchful, and above all cool and sane. Since mob violence will make the government's task infinitely more difficult, it will not be tolerated. We shall not defeat the Nazi evil by emulating its methods."

—Excerpt from mimeograph copy of address of Solicitor General Biddle furnished by him to appellants' counsel; also see booklet entitled "The Persecution of Jehovah's witnesses", published January, 1941, by American Civil Liberties Union, New York; also, booklet entitled "Liberty's National Emergency—The Story of Civil Liberty in The Crisis Year 1940-1941", published June 1941, by American Civil Liberties Union, New York.

See, also,

"The Case of Jehovah's witnesses" (John Haynes Holmes), The Christian Century (Chicago) for July 17, 1940.

"Armageddon, Inc." (Stanley High), The Saturday Evening Post (Philadelphia) for September 14, 1940.

"Jehovah's witnesses, Who Refuse to Salute the Flag," Life magazine (Chicago) for August 12, 1940.

"Fifth Column Jitters" (Charles R. Walker), McCall's magazine (New York) for November 1940.

"Jehovah's 50,000 witnesses" (H. Rutledge Southworth), The Nation magazine (New York) for August 10, 1940.

"Peddlers of Paradise" (Jerome Beatty), The American Magazine for November 1940.

"Rutherfordism v. Catholicism" (Thomas Emmett Coll), Our Sunday Visitor (Huntington, Indiana) for August 4, 1940.

The situation and setting of this entire case is a condition that has been brought about exclusively by the appellees in their intense and incensed patriotic zeal to whip up senti-

ment against Jehovah's witnesses. In this connection we kindly draw this Court's attention to the case of *Olmstead* v. *United States*, 277 U. S. 479, where Mr. Justice Brandeis, dissenting, wrote:

> "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."

Appellees advance the argument that these are times of stress and of national emergency, when the liberties and freedom of the people must be subserved to the common good and desire of the majority, so as to insure tranquility. This was answered in *Ex parte Milligan* (1866), 4 Wall. 2:

> "No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government."

The entire opinion of the court below, as well as every argument advanced by appellees is answered in the case of *Hague* v. *C. I. O. et al.*, 101 F. (2d) 774, 785, 786, 790-791. There the Court said as follows:

> "The ordinance has been administered in an unconstitutional manner.
>
> "But even if we were to assume that the ordinance of Jersey City under consideration is valid and constitutional, none the less we find that it has been administered in a discriminatory and therefore unconstitutional manner. • • •
>
> "We can find no competent evidence from the record before us that violence or disorder would have resulted either from the meetings which the appellees desired to hold or from words which the speakers were likely to deliver at such meetings. Nor was there any reasonable apprehension that the public in Jersey City would have rioted. The record, however, presents an extraordinary fact. The Mayor of Jersey City and the

other appellants endeavored to build up a dangerous situation, one in which sympathizers of the appellees could not safely speak. That such efforts did not result in actual danger seems to us to have resulted rather from the good sense of the citizens than from the good will of Mayor Hague and his associates. • • •

"Such conduct on the part of the appellants is in violation of the due process clause of the Fourteenth Amendment. The criterion imposed by the authorities of Jersey City upon the right to speak therein is simply whether or not the individual who is to speak is a right thinking person in view of those who constitute the city authorities. No other test is applied. The authorities upon this subject are very clear. In Sunday Lake Iron Co. *v.* Township of Wakefield, 247 U. S. 350, 352, Mr. Justice McReynolds, delivering the opinion of the Supreme Court, stated: 'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.

"We think that an American community, devoted to American principles, cannot exist upon the terms offered by the appellants. Minorities, however unpopular, must be allowed to make their voices heard and the whipping up of public indignation and public clamor to the end that free expression of opinion and free assembly may not be had sits with little grace upon the officials of an American city. Fundamental civil liberties must not be tampered with if our system of democratic government is to survive. • • •

"The appellants contend that the appellees have a full and adequate remedy at law and that therefore the causes of action set up in the bill of complaint are not cognizable in equity. In our opinion this contention cannot be sustained. The record shows a shocking and constant disregard of the basic civil rights of the appellees by the appellants. These acts were torts and their threatened continuance is sufficient ground for

> the equitable relief sought and granted. Terrace *v.* Thompson, 263 U. S. 197; Walla Walla *v.* Walla Walla Water Co., 172 U. S. 1, 11, 12; Osborn & Co. *v.* Missouri Pac. Ry. Co., 147 U. S. 248, 258."

See also this Court's opinion affirming the above decision, 307 U. S. 496. Also, *State* [*Florida*] *ex rel. Wilson et al.* v. Russell, 1 So. (2d) 569.

As to the right of the appellants to an injunction to restrain the enforcement of the criminal statute in question, clearly shown to be unconstitutional on its face and as construed and applied, see the cases cited under Second, Fourth and Eighth Grounds, *supra,* pages 20, 22, 24.

In this connection, let the court bear in mind that what is here sought is not to restrain the criminal prosecutions now pending in the Illinois State courts. It is admitted by appellants that they are not entitled to enjoin pending criminal actions. See *Cline* v. *Frink Dairy Co.,* 274 U. S. 445. What appellants ask is to restrain the threatened future enforcement and repeated arrests and prosecutions under the statute in question. This relief is warranted under the cases above referred to.

In the case of *Nashville C. & St. L. Ry. Co.* v. *McConnell,* 82 F. 65, 70, the court said:

> "The very fact that a right has been violated, and that this violation is constantly going on, and that a court of law cannot, in damages, compensate the injury or stop the wrong, furnishes the best possible reason for interference by court of equity."

See, also, the case of *Dearborn Publishing Co.* v. *Fitzgerald, supra,* where the court said:

> "Defendants' action, however, prevents other sales from time to time and from week to week. This is a continuing course of conduct, and, if not supported by a valid constitutional law or is in excess of authority conferred on them by any valid law or ordinance, be-

comes a continuing and repeated wrong. In this situation a court of equity has from time immemorial granted relief * * *."

In *Petroleum Exploration, Inc.* v. *Public Service Comm. of Ky.*, 304 U. S. 209, the court said:

"The injury which flows from the threat of enforcement of an allegedly unconstitutional, regulatory state statute with penalties so heavy as to forbid the risk of challenge in proceedings to enforce it is generally recognized as irreparable and sufficient to justify an injunction."

The trial court was in error when it held that the remedy of defense of the criminal actions and subsequent appeal to the Supreme Court of the State constituted an adequate remedy at law. See cases cited under Third Ground, *supra*, pages 21, 22.

In *Terrace* v. *Thompson*, 263 U. S. 197, this Court said:

"They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had if the law complained of is shown to be in contravention of the Federal Constitution."

In the case of *Railroad and Warehouse Comm. of Minnesota, et al.* v. *Duluth St. Ry. Co.*, 273 U. S. 625, 628, this Court said:

"Where as here *a constitutional right* is insisted on we think it would be unjust to put the plaintiff to the chances of possibly reaching the desired result by an appeal to the State court when at least it is possible that, as we have said, it would find itself too late if it afterwards went to the District Court of the United States. Pac. Tel. & Teleg. Co. *v.* Kuykendall, 265 U. S. 196. Okla. Natural Gas Co. *v.* Russell, 261 U. S. 290."

The trial court relies upon the case of *Watch Tower Bible & Tract Society* v. *Bristol, et al.*, 24 F. Supp. 57, affirmed without opinion, 305 U. S. 572. There the trial court found that the bill was not supported by proof. That court said:

> "There are no allegations in the complaint which show that the defendants have threatened further or immediate prosecution if complainants re-visit the city to preach their doctrines or distribute their literature. It is not enough to say that a reasonable assumption may be indulged in that from past performances such prosecution would probably follow. There is no prosecution or threat of prosecution against the corporate complainant."

Also the case of *Watson, et al.* v. *Buck, et al.* (May 26, 1941), 61 S. Ct. 962, is clearly not in point with the facts here because in that case there was no showing of actual threats of arrests or prosecutions or application of the particular statute. Furthermore, this Court found the statute valid and that it had not been misconstrued. There had been no arrests. Here, however, there have been thirty (30) arrests. Actions speak louder than words! Appellees here have actually committed the overt criminal act of foully arresting, abusing and mistreating Jehovah's servants, ordained ministers of Almighty God, and depriving them of their civil rights. It is a known fact that persons who designedly commit criminal acts against others refrain from making statements that incriminate themselves when confronted by their adversary. In a case where the overt act of repeated prosecution is shown, as here, under a particular statute, such constitutes "circumstantial evidence" which proves immediate and imminent injury and damage.

If the rule were otherwise it would permit the wrongdoer to repeatedly commit the wrongful act of false arrests and

carefully guard his statements and not make any statements and thus to escape the equitable powers of a court.

However, we are not compelled to rely upon "circumstantial evidence" to prove the actual threats. The undisputed evidence and express admissions from the witness stand on the part of appellees show expressly threats to continue to prosecute under the particular statute any of Jehovah's witnesses found distributing literature. The supposition on the part of the trial court that this case is governed by the two above mentioned cases (*Watson* v. *Buck*, and *Watch Tower* v. *Bristol*) is based upon a false premise and a false finding of fact not supported by evidence and contrary to the undisputed evidence.

The court also relies upon *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, and *Beal* v. *Missouri Pac. R. Co.*, 312 U. S. 45. In those cases the defendant public officials sought only to obtain a single prosecution as a test case in order to establish the constitutionality of a criminal law violated by the plaintiff. There were no continuous and repeated arrests and prosecutions as here are shown. In the *Beal* case judgment was rendered upon the pleadings, and the denials of threats contained in the answer and the statements in the answer that they were not intending to prosecute or threatening to prosecute the plaintiffs and others under the statute were conclusively taken as admittedly true, to wit, that there were no threats. Also, concessions were made in oral argument which waived the questions of irreparable injury entirely. This does not exist in this case.

The case of *Fenner* v. *Boykin*, 271 U. S. 240, also relied upon, is distinguishable for the same reasons. There the court held that no facts were established entitling plaintiff to injunction and said:

> "Unless it plainly appears that this course would not afford an adequate protection."

Here the lives, reputation, property, family, liberty, civil rights and very homes of appellants are at stake and at the mercy of the appellees. They are held in excessive bail, put to trial in a community where excessive prejudice prevails, depriving them of their right of fair trial, held incommunicado, denied their right of freedom of speech, press and worship. It is impossible to compensate these things with money. In the case of *Hague* v. *C. I. O., supra,* this Court said that civil rights are incapable of money valuation. Appellants and their association's representatives are denied their liberty by continuous incarceration which cannot be compensated by money. Their reputation is blackened by the prosecutions. Their very lives are imperiled by reason of mob violence fomented and encouraged by the appellees who take no steps to prevent it and who stand by and act as spectators to such violence. They refuse to do anything about it or to discern the real position of the wrongdoers. All the wealth and property in the world does its owner no good whatever if he is wrongfully deprived of his liberty and incarcerated behind four walls. His liberty is more highly cherished and desired than his property.

The facts in the case at bar are in sharp contrast to those of the cases relied upon by the court below and appellees. Here appellants are engaged in a continuous course of conduct which gives rise to repeated offenses claimed by appellees to be committed under the statute.

It is manifest that the Civil Rights Act of 1870 as amended April 20, 1871 (8 U. S. C. A. 43), gives every person the right to resort to equity to redress the deprivation of "civil rights" by public officials under the guise of State statutes. The case of *Hague* v. *C. I. O., et al.,* 307 U. S. 496, is directly in point here, and so held. There this Court upheld the injunction previously granted on facts not as strong as the facts here.

It is submitted that to enforce the strict rule of construction against this Civil Rights statute (which is entitled to a liberal construction), and also to apply against it the arbitrary technical rule announced and applied by the trial court in this case, would be to defeat the very purpose and intent of Congress in passing the Civil Rights Act. While the act did not enlarge the jurisdiction of the court, it certainly did provide and was intended to provide that the Federal courts protect citizens deprived of civil rights in circumstances as revealed here.

The trial court was oblivious to the thirty and more cases (cited at pages 20 to 22, inclusive, *supra*) which were called to its attention. That court also ignored the holding of the United States District Court for the Eastern District of Kentucky, sitting as a statutory three-judge court, in the case of *Beeler, et al.*, v. *Smith, et al.* (decided June 4, 1941, unreported at this writing), entire text of opinion annexed hereto as Appendix B. In that case the wrongful application to Jehovah's witnesses of the sedition statute of Kentucky was enjoined, permanently.

Here the trial court held directly contrary to the holding of the Federal district court for Kentucky on identical facts, as well as contrary to injunctions granted by eight other Federal district courts, in recent months, on facts identical with the facts in this case, and contrary to the thirty and more cases decided by this Court on the same question.

The trial court and the appellees take the position that "religion" occupies a place on a pedestal high above the reach of any criticism and stands higher in the law than politics and commerce. As far as the Constitution and the right of free speech are concerned, they are all on the same level. In the eyes of Almighty God, they are likewise on the same level. Jehovah's witnesses have just as much

right to criticize organized religion, and the Roman Catholic Hierarchy in particular, as Republicans have the right to criticize Democrats or the principles of the Democratic party, and vice versa. To maintain that the principles announced by the trial court and the appellees should stand would mean the end of free speech in this land. In this connection the trial court makes a naive statement which indicates that it wants to set itself up as a censor of the Truth. From its Opinion we quote as follows:

> "Furthermore, it does not appear from the evidence that it is essential for the plaintiffs to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their ministry. * * *"

This statement on the part of the trial court is reminiscent of the Biblical account (Luke, chapter 19) where the Pharisees asked Jesus to rebuke His disciples who were pleased to give praise to the King, even though by giving such praise the "existing churches" of that day were "belabored". Jesus not only did *not* rebuke His disciples, but He set them a good example by declaring some scathing denunciations against those hypocritical religionists, which are set out as "lessons" for the present-day "existing churches" in the four books of the Bible commonly known as the Gospels.

Jehovah's witnesses are not the first to truthfully attack the Roman Catholic Hierarchy. The un-Biblical and God-dishonoring doctrines and unethical practices of that organization were attacked by Martin Luther, John Wesley, John Calvin, Wycliffe, Huss, Zwingli, Savonarola, and others. However, the "Protestants" no longer protest, but have allied themselves with the Roman Catholic Hierarchy, while it acts with the totalitarian dictators to destroy the liberty of the people.

This statement, as well as like statements contained in the Watchtower literature, is not a new or improper statement. Furthermore, it is not the first time that that character of indictment has been returned against the Roman Catholic Hierarchy. In the archives of the largest and one of the greatest States of the Union, there is one public document which contains an indictment against the Roman Catholic Hierarchy and which conclusively brands it as America's *public enemy number one,* even as early as 1836. We refer to the Unanimous Declaration of Independence made by the People of the State of Texas at the Town of Washington, on the second day of March, 1836, when severing themselves from the then totalitarian government of Mexico that had been grabbed by one Santa Anna under the auspices of the Roman Catholic Hierarchy, and violated every rule of honesty and good government to such an extent that the Texans were compelled to revolt from that government, as did the original colonies of the United States from King George.

The document in its complete text can be found in Vernon Centennial Edition of the Revised Statutes of Texas, edited and published in the year 1936. A few brief excerpts will suffice:

> "When the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of Sovereign States, to a Consolidated, Central, *military despotism* in which every interest is disregarded, but that of the *army and the priesthood*—both the *eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants:* • • • the inalienable right of the people • • • enjoins it as a right towards themselves • • • to abolish such government and create another • • •

to secure their future welfare and happiness. * * *

"The Mexican government * * * now offers us the cruel alternative either to abandon our homes, acquired by so many privations, or submit to the *most intolerable of all tyranny, the combined despotism of the sword and the priesthood.* * * *

"It denies us the right of worshiping the Almighty God according to the dictates of our own conscience; by the support of a national religion calculated to promote the temporal interest of its human functionaries rather than the glory of the true and living God."

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the United States District Court.

Wherefore the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the trial court disposed of an important Federal question in a way that is in conflict with applicable decisions of this Court and has so radically and far departed from the Constitution of the United States and the accepted and regular course of the jurisdictional procedure, as to call for this Court's power of supervision to halt the same.

Confidently submitted,

HAYDEN C. COVINGTON,
WALTER GROSSMANN,
LOUIE F. ORR,
Attorneys for Appellants.

APPENDIX A.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

Civil Action No. 383.

CECIL BEVINS, et al., *Plaintiffs,*
vs.
"DOC" PRINDABLE, Individually, and as Sheriff of St. Clair County, Illinois, et al., *Defendants.*

Filed June 17, 1941. D. H. Reed, Clerk.

Memorandum.

Before Evans, Circuit Judge, and Lindley and Wham, District Judges.

Per CURIAM:

This is a suit by members of a group known as Jehovah's witnesses on behalf of themselves and others of the same group seeking to enjoin defendants who are officials of the State of Illinois and of St. Clair and Saline Counties in said State from enforcing in said counties section 471, chapter 38 of the Revised Statutes of Illinois in a manner that will interfere with the distribution in said counties by Jehovah's witnesses of books and pamphlets published by the Watchtower Bible and Tract Society, Incorporated. The case is now before this statutory three-judge court upon plaintiffs' application for an interlocutory injunction after notice to defendants and after hearing upon affidavits.

The principal grounds upon which the injunction is sought are as follows: (1) That said statute is invalid and void under the Fourteenth Amendment of the Constitution of the United States. (2) That said statute is void on its face because vague and indefinite. (3) That said statute, as construed and applied by the defendants to plaintiffs and others of Jehovah's witnesses in St. Clair and Saline Counties, Illinois, deprives them of their civil rights

of freedom to worship, speech, press and assembly. (4) That defendants have threatened to continue to enforce said statute and make further arrests and prosecutions if plaintiffs distribute Watchtower literature in St. Clair and Saline Counties and unless defendants are enjoined plaintiffs will suffer great and irreparable loss and injury.

Jurisdiction is claimed under the Federal statute which gives Federal district courts jurisdiction of suits at law or equity brought by any person to redress the deprivation of civil rights secured by the Constitution of the United States under color of a statute of a State (28 U. S. C. A. 41, par. 14). In view of nature of the suit as outlined the claim seems well grounded. Hague *v.* Committee for Industrial Organization, 306 U. S. 624.

Plaintiffs seek by interlocutory injunction to restrain the enforcement of a state statute by the qualified and acting officers of the state by reason of its alleged unconstitutionality. Upon application of the plaintiffs and as required by section 266 of the Judicial Code (28 U. S. C. A. 380) a statutory three judge court was organized to hear the case.

Prior to the hearing defendants filed separate motions to dismiss the complaint for insufficiency. We are of opinion that disposition of said case should be made on its merits rather than upon the pleadings or upon a question of law and, therefore, deny said motions to dismiss.

Defendants Dwight H. Green and George F. Barrett, Governor and Attorney General, respectively, of the State of Illinois, urge that, since the complaint avers that neither of them actually participated in the alleged wrongs of which complaint is made and that neither of them have made threats of future action against the plaintiffs, they are not proper parties defendants. Whether or not they are indispensable parties, as contended by plaintiffs, or even necessary parties, we are of opinion that in view of the fact that plaintiffs attack the constitutionality of a statute of the State of Illinois and seek to enjoin its enforcement said defendants, in their official capacities, are proper parties (28 U. S. C. A. 380; Arneson *v.* Denny, 25 F. (2d) 993). Since these defendants are not charged with having

actually done or threatened to do anything of which plaintiffs complain the term "defendants" when used hereafter will refer to the other defendants only.

The essential facts are these: The plaintiffs and others who belong to a group known as Jehovah's witnesses have for many years distributed in all the counties of Illinois, including St. Clair and Saline, books, pamphlets and other literature published by the Watchtower Bible and Tract Society, Incorporated. Sometimes they work in large groups coming into a community from surrounding counties and states. Each of them regards himself as a duly ordained minister of the gospel and carries credentials as such from said Watchtower Bible and Tract Society, Incorporated. Each believes it to be his divinely required duty to worship God and to witness for Him by distributing said Watchtower literature on the streets and from house to house.

In the months of June, September and December, 1940, plaintiffs and others of Jehovah's witnesses were pursuing their ministry by distributing Watchtower books, pamphlets and periodicals on the streets and from house to house in the cities of Belleville, St. Clair County, Illinois, and of Harrisburg, Saline County, Illinois. At times phonograph records were used. Some of them sold Bibles. They did not sell the Watchtower literature but received contributions which was the means of a livelihood for those who were full time ministers. Said books, pamphlets, periodicals, records and other literature set forth the beliefs and doctrines of Jehovah's witnesses. Some of them also contained drastic denunciations of all religion and religious organizations, as "a snare and a racket of the very worst kind," with particularly bitter and virulent attacks upon the Roman Catholic Church; also accusations which in substance and effect were charges of treasonable disloyalty, and deceptive and dishonest teaching and practices on the part of the leaders of both the Catholic and Protestant Churches and particularly those of the Catholic Church. Plaintiffs and others of Jehovah's Witnesses are taught and believe that it partakes of idolatry to salute the flag and not only refuse so to do but teach the doctrine.

Resentment was aroused among some of those whom they canvassed by the attacks contained in said literature upon religion, churches and church leaders. Some, particularly in Harrisburg, were incensed by their attitude toward the practice of saluting the flag. Complaints were made to those of the defendants who were law enforcing officers in both counties by those who were offended by the attacks upon religion and the Catholic and Protestant churches and upon their leaders contained in the literature so distributed, warning of violence against the persons distributing said literature unless such distribution ceased and requesting the officers to take steps to stop it. Investigations by the officers were followed by arrests and preferment of charges against plaintiffs of violation the Illinois criminal statute section 471, chapter 38, Illinois Revised Statutes which reads:

"It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00)."

Typical of the charging part of the complaints under which plaintiffs were prosecuted is the following:

"• • • that Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers on, to-wit the 31st day of August 1940, at the County aforesaid then and there unlawfully advertise, sell or offer for sale a certain sketch which publication portrays depravity, criminality, unchastity or lack of virtue of a class of citizens belonging to the

Roman Catholic religion, which said publication exposes the citizens of said religion to contempt, derision or obloquy and which is productive of breach of the peace or riot contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois."

In the city of Belleville twenty-three of Jehovah's witnesses were arrested, charged with violation of said statute and released on bond. These cases have not been brought to trial and plaintiffs have made no showing of any effort to procure trials though the cases have been pending since June 1940, or shortly thereafter. In Harrisburg, Saline County, three of Jehovah's witnesses were arrested, brought to trial, found guilty and sentenced to pay fines. These cases had been pending on appeal for several months at the time of the hearing herein and no showing of effort on the part of plaintiffs to obtain trial of these cases appears from the evidence. Certain of the defendants in each of said counties have told plaintiffs they will continue to arrest and prosecute any of Jehovah's witnesses found distributing Watchtower literature in his county. Ever since and by reason of the said arrests, prosecutions and threats of future prosecutions plaintiffs have refrained from distributing said literature in said counties and say that by reason of the wrongful acts and threats of defendants they have been deprived by defendants of their rights of free speech, press, assembly, worship and their right, in connection with the distribution of said literature, to receive money contributions upon which some of them rely for a livelihood; also that unless further arrests and prosecutions are restrained by interlocutory injunction they will suffer irreparable damage and loss pending final hearing.

Plaintiffs deny that they have violated the statute in question, when it is properly construed, and say that if said statute is construed to forbid the distribution of Watchtower literature it is unconstitutional and void.

We have found under the evidence that defendants do not threaten or intend to arrest plaintiffs or any of them for distributing Watchtower literature in either of said

counties unless the literature contains matter which, in the opinion of the State's attorney of the county, constitutes a publication in violation of said section 471 of chapter 38 of the Revised Statutes of Illinois and not then until a supposed offense has actually been committed. We have further found that the acts of the defendants in connection with the investigation, warning, arrest, detention and prosecution of the plaintiffs were official acts performed in good faith in an honest endeavor to carry out their official duties as law enforcing officers; also that defendants honestly believed that the publication of the virulent attacks upon churches and religious leaders contained in the Watchtower literature being distributed by plaintiffs constituted a violation of said section 471; also that they feared and had a reasonable basis for fear that if the distribution of the literature containing such attacks continued, riots, assaults and breaches of the peace would ensue.

While the evidence does show that the defendants who are local law enforcing officers will continue to enforce the statute in their respective counties when advised by the State's attorney that the statute is actually being violated, the evidence fails to show that any extensive injury will be suffered by any of the plaintiffs or others on behalf of whom they bring this suit by such enforcement pending final hearing herein or a determination of the constitutionality of the statute and its applicability to the plaintiffs by the courts of Illinois. Plaintiffs are at liberty, so far as the evidence shows to propagate their beliefs, distribute their literature and receive contributions anywhere outside of St. Clair and Saline Counties. The evidence indicates a practice among them of working away from home. Some of the plaintiffs are from other States. In view of this practice and the fact that the effect of the allegedly wrongful acts of defendants is confined to the counties of St. Clair and Saline, it would seem that the probable loss and injury to plaintiffs that will flow from the threatened acts of the defendants pending final hearing need not be great. Furthermore, it does not appear from the evidence that it is essential for the plaintiffs to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their

ministry; nor that there may not be a great deal of Watchtower literature for them to distribute that would be considered legally inoffensive. None of the defendants has indicated any design to interfere with any witnessing by plaintiffs in accordance with their beliefs unless such witnessing is accompanied by violations or supposed violations of existing law.

In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say that it is not clearly apparent that the statute in question is unconstitutional. Plaintiffs say it is vague and indefinite. There is truth in the charge but the statute deals with a type of offense that defies exact definitiveness. In that respect it is similar to statutes creating the offense of criminal libel. (Chapter 38, section 402, Illinois Revised Statutes 1939). Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question for the courts of Illinois. This statute does not subject the plaintiffs to "previous restraint" such as received the condemnation of the Supreme Court in Lovell *v.* Griffin, 303 U. S. 444; Hague *v.* Committee for Industrial Organization, 407 U. S. 496, Cantwell *v.* Connecticut, 310 U. S. 296 and in Schneider *v.* State, Supreme Law ed. Advance Opinions, Vol. 84, p. 115. It requires no license for seeking contributions or for distribution of literature and no administrative censorship is provided. Until the statute has actually been violated or reasonable grounds exist for believing that the statute has been violated or that such violation is imminent, there can be no proper official interference with the distribution of the literature and such interference must be limited to the distribution of literature that offends the statute. It does not condemn publication of all literature as did the ordinance condemned in Lovell *v.* Griffin, supra, but is limited to publications having the nature and content described in the statute.

But if the statute were clearly unconstitutional, it would not necessarily follow that the interlocutory injunction here prayed for should issue from this court. The general rule is that equity will not interfere to prevent the enforce-

ment of a criminal statute. Hygrade Provision Company *v.* Sherman, 266 U. S. 497. This may be done only under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Fenner *v.* Boykin, 271 U. S. 240; Watson, et al. *v.* Buck, et al., decided by United States Supreme Court May 26, 1941, In Spielman Motor Sales Co. *v.* Dodge, 295 U. S. 89 at 95, the court said:

"The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. * * * We have said that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of Federal questions."

Here the danger of irreparable loss is neither great nor immediate and such loss as may be threatened can be obviated in large measure by the plaintiffs themselves, if they so desire, pending the hearing of the case on its merits or the authoritative construction of the statute by the courts of the State.

In the recent case of Beal *v.* Missouri R. Corporation published in the Advance Opinions of the Supreme Court, Law ed., Vol. 85, p. 380 at 382, the court said:

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. * * * No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks aid. * * *

"* * * The federal courts are without jurisdiction to try alleged criminal violations of State statutes. The State courts are the final arbiters of their meaning and appropriate application, subject only to review by this Court if such construction and application is appropriately challenged on constitutional grounds. * * * Hence interference with the processes of the criminal law in State courts, in whose control they are lodged by the Constitution, and the determination of questions of criminal liability under State law by Federal courts of equity can be justified only in most exceptional circumstances, and upon a clear showing that an injunction is necessary to prevent irreparable injury. * * * And in the exercise of the sound discretion, which guides the determination of courts of equity, scrupulous regard must be had for the rightful independence of State governments and a remedy infringing that independence which might otherwise be given should be withheld if sought on slight or inconsequential grounds. De Viovanni *v.* Camden Fire Ins. Asso., 296 U. S. 64, * * *."

The reluctance of the Federal courts to construe or pass upon the validity of a State statute or a principle of law involving State policies or local property rules when the construction or application of such statute or principle by the State courts which will not only be authoritative but may remove all proper constitutional objections, is readily obtainable is well illustrated by recent decisions of the Supreme Court. Railroad Commission of Texas *v.* Pullman Company, Supreme Court Law Ed. Advance Opinions, Vol. 85, p. 580; Thompson *v.* Magnolia Petroleum Company, 309 U. S. 478. In the former case the court said:

"In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. * * * The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court."

The case of Magnolia Petroleum Company, supra, arose in a court of bankruptcy where the court had "exclusive and non-delegable control over the administration of the estate in its possession" yet the Supreme Court was of opinion that an undetermined question of Illinois real estate law should be sent to the courts of Illinois for decision instead of being resolved by the bankruptcy court. See also Achtien *v.* Dowd, 117 F. 2d 989.

The record shows that there are a score or more of cases against plaintiffs pending in the courts of Illinois each presenting an opportunity for a speedy determination of the validity, meaning and proper application of the statute in question in so far as plaintiffs' rights are affected. Should the decision of the Illinois Courts be unsatisfactory a review of the federal questions by the Supreme Court of the United States will be available. In our view of the case, under the evidence now before the court, the circumstances are not of that exceptional character that justifies an interference by the federal courts when the way is open for plaintiffs to secure a prompt adjudication of their rights in the courts of Illinois.

Plaintiffs assert that they have not violated the Illinois statute in question when properly construed. The Illinois Supreme Court alone can declare with final authority the meaning and applicability of the statute. As said by the United States Supreme Court in Watson, et al. *v.* Buck, et al., decided May 26, 1941, in an injunction suit which arose in the State of Florida, we say here, "It is highly desirable that it should have opportunity to do so."

The precise question presented to us now takes form as follows; Should an application for an interlocutory injunction restraining state officers from enforcing a state criminal statute be allowed where the statute is not clearly unconstitutional and where the evidence shows that though some injuries and loss may be suffered by plaintiffs, through the enforcement of the statute, which may, because of their nature be irreparable, it fails to appear that such injuries and loss need be more than slight or inconsequential? We think the question must be answered in the negative and the application for interlocutory injunction denied.

The situation is fully disclosed by the pleadings, the affidavits, and the admissions. It would seem that the parties might stipulate that the hearing on the application for temporary injunction be viewed as an application for a permanent injunction.

(Signed) EVAN A. EVANS,
Senior United States Circuit Judge.

(Signed) WALTER C. LINDLEY,
United States District Judge.

(Signed) FRED L. WHAM,
United States District Judge.

Dated this 17th day of June, 1941.

[Stamp:] Filed Jun. 17, 1941. D. H. Reed, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

Civil Action, No. 383.

CECIL BEVINS, et al., *Plaintiffs,*

vs.

"Doc" PRINDABLE, individually, and as sheriff of St. Clair County, Illinois, et al., *Defendants.*

Special Findings of Fact.

Pursuant to Rule 52 of the Rules of Civil Procedure, the court now states its special findings of fact, as shown by the admissions contained in the pleadings and the affidavits filed at and subsequent to the hearing on February 17, 1941, upon the motion of plaintiffs for an interlocutory injunction in the above entitled cause, as follows, to wit:

(1) At the time of the commencement of this suit and at the time of the hearing herein the plaintiffs Cecil Bevins, Louis F. Wilson, Charles Davis, Ernest Summers and Samuel S. Goodin were residents and citizens of the State of Illinois. The plaintiffs Austin R. Simcox and Nancy M. Simcox were residents and citizens of the State of Indiana. The plaintiff C. Ray Leiwe was a resident and citizen of the State of Missouri.

(2) Each of the defendants is a resident and citizen of the State of Illinois and was at the time of the commencement of this action.

(3) The amount involved in this suit does not appear from the allegations of the complaint or from the evidence.

(4) The defendant Dwight H. Green is sued only in his official capacity as Governor of the State of Illinois and the defendant George F. Barrett only in his official capacity as Attorney General of the State of Illinois. Each of said defendants is made a party to this suit only because the constitutional validity of a statute of the State of Illinois is being attacked. Said Dwight H. Green became the duly qualified and acting Governor of the State of Illinois on the second Monday of January, 1941. Said George F. Barrett became the duly qualified and acting Attorney General on the second Monday of January, 1941. Said defendants did not occupy their said respective official positions at the time of the alleged threats and arrests which are complained of in this suit and neither is charged with having committed or threatened any act which is complained of in this suit.

(5) The defendant "Doc" Prindable was at the times complained of and at the time of said hearing herein the duly qualified and acting sheriff of St. Clair County, Illinois.

(6) The defendant Louis P. Zerweck was at the times complained of and at the time of the said hearing herein the duly qualified and acting state's attorney in and for St. Clair County, Illinois.

(7) The defendant George Remnsnider was at the times complained of and at the time of the said hearing herein the duly qualified and acting mayor of the city of Belleville, Illinois.

(8) The defendant Thomas Lonie was at the times complained of and at the time of the said hearing herein the duly qualified and acting chief of police of the city of Belleville, Illinois.

(9) The defendant Anthony J. Stoeckel was at the times complained of and at the time of the said hearing herein a duly qualified and acting justice of the peace in St. Clair County, Illinois.

(10) The defendant Tom Gram was at the times complained of and at the time of the said hearing herein the duly qualified and acting sheriff of Saline County, Illinois.

(11) The defendant Jack C. Edwards was at the times complained of and at the time of the said hearing herein the duly qualified and acting deputy sheriff of Saline County, Illinois, and was at said times Commander of the American Legion Post at Harrisburg, Illinois.

(12) The defendant Luke Barnhill was at the times complained of and at the time of the said hearing herein a duly qualified and acting justice of the peace, Saline County, Illinois.

(13) The defendant Trafton Dennis became the duly qualified and acting state's attorney of Saline County, Illinois, on December 2, 1940, succeeding in office Lloyd H. Melton who was the duly qualified and acting state's attorney of Saline County, Illinois, from the first Monday in December, 1936, to the first Monday in December, 1940. Said Lloyd H. Melton is not a party to this suit.

(14) The plaintiffs are members of an unincorporated body known as Jehovah's Witnesses who profess to be followers of Jesus Christ, entirely devoted to Him and to His Father Almighty God "whose name alone is Jehovah," diligent and faithful in carrying out the commands of the Most High God recorded in the Bible. Each of them believes he is in covenant with Almighty God to obey His will and by the terms of which covenant he is required to give witness to the name, honor and majesty of Almighty God and His Theocratic Government. Each of the plaintiffs, according to his belief and the tenets of his faith, is an ordained minister of Jehovah God, holding credentials as such from the Watchtower Bible and Tract Society, a New York Corporation, publishers for Jehovah's witnesses. Each of the plaintiffs, as such ordained minister, engages in preaching

the gospel of God's kingdom from house to house and publicly upon the streets, as members of that faith believe they must do to obey the will of God and to escape destruction and death, by means of distributing literature printed by the Watchtower Bible and Tract Society, Incorporated, a New York corporation, and the Watchtower Bible and Tract Society, a Pennsylvania Corporation, in the form of books, booklets and periodicals of various titles and issues. These publications they deliver to the people whom they canvass at their homes and upon the streets, sometimes as outright gifts and at other times they receive contributions from the recipients of the publications. They also use portable phonographs and disseminate their views by playing records to persons who will listen.

(15) Jehovah's witnesses have for many years prior to the times here in question been engaged in distributing the literature published by said Watchtower Bible and Tract Society, under the direction of that Society, to the residents of the counties of St. Clair and Saline and every other county of the State of Illinois.

(16) The literature distributed by Jehovah's witnesses does not advocate the overthrow of the Government or resistance to the Constitution of the United States of America and is outspokenly anti-Fascist, anti-Nazi and anti-communistic and is not connected with fifth column activities.

(17) The literature published by said Watchtower Bible and Tract Society is distributed in said St. Clair and Saline Counties, Illinois, by Jehovah's witnesses acting as full time and part time ordained ministers of the gospel. The full time representatives of the Society acting as ordained ministers depend for their livelihood upon the income which they receive in the way of contributions from the persons to whom they distribute the said literature. Part time ordained ministers have other vocations which they pursue. Some of them sell Bibles also as they distribute the Watchtower literature. From time to time Jehovah's witnesses from surrounding communities in Illinois and Missouri assemble with those in St. Clair County and work St. Clair County and Belleville in large groups. As many as five hundred are affected by the situation in St. Clair County

of which complaint is made. It is their frequent practice to assemble and work together in numbers in the various communities where they work. They expect trouble and interference and have agents whose duties are to check interference and provide legal counsel when necessary.

(18) That the literature which is distributed by these plaintiffs and other members of their group is characterized by a discussion and interpretation of certain Bible passages, containing throughout a vein of prophecy to the effect that there will soon be a complete destruction of all our religious, commercial and political institutions, and a wholesale slaughter of the unchristian people, all of which will be committed by the invisible army of the Lord at the great "Battle of Armageddon"; that neither the literature nor these plaintiffs advocate that the creature man should commit any act or acts of force or violence to bring about this destruction; that these plaintiffs believe, and the literature teaches, that there will be established on earth, after such battle, a theocracy whereby God's Kingdom on Earth will be achieved; that these plaintiffs believe, and the literature teaches, that all forms of religion, as practiced today, is a "snare and a racket."

(19) The Watchtower Bible and Tract Society has published more than 315,000,000 volumes of literature, consisting of books, booklets and pamphlets, which have been distributed throughout the world and every state of the United States, including Illinois, and continues to publish such literature. Some of the books are entitled "Deliverance"; "Creation"; "Government"; "Prophecy". Many others were introduced as exhibits in the case. Some of the booklets so distributed are entitled: "Armageddon"; "Choosing"; "Conspiracy Against Democracy"; "Cure"; "Judge Rutherford Uncovers Fifth Column"; "Warning"; and "Face the Facts". Many others were introduced in evidence as exhibits. These publications set forth various phases of the beliefs of Jehovah's witnesses and their interpretation and application of the Holy Bible. One of the plaintiffs in his affidavit filed as evidence herein states: "The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon

earth, but at the same time such books' contents clearly set forth the true distinction between all religion and the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of the true worship of Almighty God." Jehovah's witnesses personally and in their literature deny that their faith and beliefs as practiced by them is a religion, or a religious creed, or that Jehovah's witnesses constitute a religious denomination, cult, sect or body. Jehovah's witnesses in their said literature denounce and attack all religion and all organized religion, Catholic and Protestant alike, as a snare and a racket and charge the Catholic Church, in particular, and its head and leaders with being a Hierarchy, wilfully and deliberately engaged in a racket, with imposing upon its members by wilful deception, with disloyalty to the United States, with being in league with the Fascists and Nazis in a conspiracy to gain political control of the world and all of the nations in the world and charge that in furtherance of such disloyal designs the Catholic Church keeps arms and munitions in their churches and buildings. Illustrative excerpts from the literature read:

"Why not let the public press demand of Congress an investigation of the cellars and crypts of the Catholic cathedrals in the United States and prove to the public whether or not they have stored away a great amount of arms and ammunition to use against the government?"

"Why not let the Dies Committee go after the Hierarchy and the Nazis? If the Hierarchy deny that they have a large amount of guns and ammunition stored, then they should not object to being investigated. If they do vigorously deny it, that is the best reason why an investigation should be had. There are many persons in the United States who have worked in building these crypts or cellars, and others who have helped unload what appeared to be piano boxes, which were filled with rifles and are stored in these crypts. I am not interested in carrying out such an investigation, because my time and energy must be used to advertising God's Kingdom, the only means of blessing of humankind."

"If the public press is so interested in getting at the facts, then institute a search and investigation disclosing who are the real enemies of American institutions. The time will come in the very near future when the Lord himself will pull the shroud completely off those hiding behind the 'Refuge of Lies' and disclose a great and hypocritical religious institution that has defamed His name and devoted its power to unrighteousness."

"The Roman Catholic Hierarchy operates from Vatican City as a religious organization, but is in fact a political organization united with Fascists and Nazis, and is endeavoring to gain control of all nations of earth."

"From whence came that monstrosity, and why has it now appeared? It is the Child of the Devil brought forth to wreck the world and to plunge humanity into destruction. Its purpose is to rule or ruin. It first attempts to rule, and, failing in that, it brings ruin upon the people. Already it has gained control of Europe and is moving to grab the British Empire and the United States of America. It has its trusted agents in every land and in every strategic position. In every department of the government it has its key men. In almost all of the metropolitan newspapers it has placed its trusted agents in important positions to see that the public does not receive the truth."

"The Roman Catholic Hierarchy of authority the Fascists and the Nazis are conspiring together to gain control and rule all the nations by dictators."

"The democracies of earth, and particularly Great Britain and America, are in great danger of totalitarian rule. The Roman Catholic Hierarchy of Authority, the Fascists and the Nazis are conspiring together to gain control and rule all the nations by dictators."

"The newspapers refuse to publish anything about the kingdom for fear of shocking the religious susceptibilities of the Roman Catholic Hierarchy and their allies. Such publication would interfere with the religious racket. • • • Religionists have an ambitious desire to rule the world in the place and stead of God and Christ. Religion is therefore a snare and a racket, and the Lord's Kingdom will do away with religion and all fraudulent schemes."

Illustrative of their reasons for making critical statements about and charges against the so-called Hierarchy of the Roman Catholic Church and against all so-called religionists are those given in the paragraph from Kingdom News, Plaintiffs' Exhibit No. 11, which reads as follows:

"Is This Spreading Hate?

"Why mention these things? Hierarchy leaders and religionists who choose to take orders from them say that Jehovah's witnesses spread hate. To every thoughtful, honest and God-fearing person Jehovah's witnesses say: In obedience to the command of Almighty God (Isaiah 58: 1; Isaiah, 54: 17) we publish these stirring facts. For what purpose? To aid every humble, order-loving person to discern the difference between religion and Christianity. These stirring facts we publish to aid such persons to forsake religion and instead learn and obey the laws of Almighty God written in His Word, the Bible, that they may live under God's Kingdom."

(20) Chapter 38, section 471, Illinois Revised Statutes, 1939, is in words and figures as follows:

"It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00).'

(21) In June 1940, while the members of Jehovah's witnesses were distributing literature published by the Watchtower Bible and Tract Society in St. Clair County, Illinois, and in the city of Belleville, the sheriff of St. Clair County

and the mayor, chief of police and members of the police force of the city of Belleville began getting telephone calls from persons who objected to said literature and to the distribution of same and who complained that said literature attacked all religion, holding same up to contempt, derision and obloquy and stating that unless the distribution of such literature was stopped "there was going to be trouble" and that such persons "would be taken off the street in ambulances." The county and city officials, including all the defendants herein who are officials of said county and city, knew from reports of officials and newspaper accounts that as a result of the distribution of similar literature by Jehovah's witnesses in Litchfield, Illinois, a neighboring city, approximately fifty-five miles from Belleville, a serious riot had taken place in which a mob estimated at one thousand persons assembled, violent assaults and sluggings occurred, many persons were injured and much property damage resulted and that to quell said riot it was necessary to call out the Illinois State Police Riot Squad. They also knew from report that the distribution of said literature by Jehovah's witnesses had caused mobs and rioting in other localities and honestly believed there was immediate danger of riot, breach of the peace and personal injury to said Jehovah's witnesses and others as a result of their distribution of their literature in Belleville and St. Clair County. Whereupon, members of the police of the city of Belleville, namely, William H. Klotz, Lincoln Luke, George Smith, John West, John Smith and Walter Magin, were ordered to investigate the activities of said Jehovah's witnesses in the city of Belleville. After such investigation had been made a considerable number of Jehovah's witnesses were arrested and detained by said officials with the honest belief that their activities in distributing the literature aforesaid was in violation of section 471, chapter 38 of the Revised Statutes of the State of Illinois. Also with the honest belief that riots, disturbances of the peace were imminent and that the safety of persons and property in the community was seriously endangered due to said activities of Jehovah's witnesses.

(22) Criminal complaints were filed against part of those who were arrested and, in particular, against plaintiffs

Emma Wilson, Charles R. Leiwe, Charles A. Davis and Ernest Summers in form as follows:

"STATE OF ILLINOIS,
St. Clair County, ss:

"The complaint and information of R. V. Gustiv, Ass't State's Attorney in said County, made before Anthony J. Stoeckel, Esquire, one of the Justices of the Peace in and for said County, who being duly sworn, upon his oath says that Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers on, to-wit, the 31st day of August 1940, at the County aforesaid then and there unlawfully advertise, sell or offer for sale a certain sketch which publication portrays depravity, criminality, unchastity or lack of virtue of a class of citizens belonging to the Roman Catholic religion, which said publication exposes the citizens of said religion to contempt, derision or obloquy and which is productive of breach of the peace or riot contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

"That this complainant has just and reasonable grounds to believe, and does believe that the said Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers committed said offense, and therefore prays that (same named offenders) may be arrested and dealt with according to law.

(Signed) R. V. GUSTIV.

"Subscribed and sworn to me before me this 31st day of August 1940.

(Signed) ANTHONY J. STOECKEL, J. P."

Others were charged in similar form.

(23) All who were arrested were given privilege of making bonds. Those named in the charge set forth in finding 21 were required to give a bond of $2,500 each and were held several hours until such bond could be secured. The bonds of certain others who were arrested were fixed at $100.00. None of those who were arrested were maltreated, assaulted or otherwise dealt harshly with in a physical

way. None of the cases in Belleville and St. Clair County have been tried but all, approximately twenty-three in number, are still pending. There is no evidence that the trials of the cases have been delayed by any fault of the defendants. There appears to have been no effort on the part of anyone to secure a determination of the cases. No reason appears which should prevent an early trial of the cases and determination on appeal, if desired.

(24) In Harrisburg, Saline County, Illinois, the occurrences complained of by plaintiffs, consisting of arrests and threats of further arrests, were similar in substance to those in Belleville and St. Clair County, except that in Harrisburg the cases were brought to trial. The defendants Tom Gram, sheriff, Jack C. Edwards, deputy sheriff, Trafton Dennis, state's attorney and Luke Barnhill, justice of the peace, all in and for the county of Saline and also Lloyd H. Melton, the predecessor of Trafton Dennis as state's attorney of Saline County, each played his official part in the arrest, arraignment and trial of three Jehovah's witnesses, namely, Cecil Bevins, Austin R. Simcox and Nancy M. Simcox. The acts and conduct on the part of Jehovah's witnesses which led to the arrests and prosecutions in Harrisburg were similar to the acts and conduct which led to the arrests and complaints and bail in Belleville, namely, distributing literature and playing phonograph records put out by the Watchtower Bible and Tract Society which contained like attacks upon and charges against all religions and churches. The cases in Harrisburg were brought to trial on complaints which were in substance as follows: "Did unlawfully present and exhibit a certain sketch and publication, which said publication portrayed lack of virtue in the Catholic and Protestant religions and did then and there expose the believers in those religions to contempt and derision and which was productive of a breach of the peace and riots." As a result of trials before defendant Luke Barnhill, justice of the peace, each of said plaintiffs was convicted and a penalty of a fine of $100.00 and costs was imposed against Cecil Bevins and $50.00 and costs against Nancy M. Simcox. The amount of the fine against Austin R. Simcox does not appear. Each of them appealed

his case to the circuit court of Saline County where it is now pending. It does not appear that the trial of said cases in the circuit court of Saline County has been delayed through any fault or design of defendants and nothing appears which has prevented or should hereafter prevent an early final determination of the cases in the state courts, if that is desired.

(25) All the acts performed by the defendants herein in connection with the investigation, warning, arrest, detention, admitting to bail, trial, prosecution and conviction of the plaintiffs and other Jehovah's witnesses in St. Clair and Saline Counties, Illinois, were official acts performed by said defendants in good faith in an honest effort to carry out their official duties and to preserve the peace. None of the defendants, individually or in an official capacity conspired with the other defendants, or any of them, or with anyone else to interfere with the plaintiffs or with other Jehovah's witnesses wrongfully or unlawfully and did not wilfully, purposely or knowingly make an erroneous application of section 471, chapter 38 of the Illinois Revised Statutes but in good faith prosecuted plaintiffs thereunder for acts and conduct which they verily believed constituted violations of said statute as they believed it was their duty to do.

(26) Certain of the defendants, namely, George Remnsnider, mayor of Belleville, Illinois, and Jack C. Edwards, deputy sheriff of Saline County, Illinois, at the time of the arrests complained of asserted that Jehovah's witnesses would not be permitted to distribute any more literature in Belleville, Illinois, or Saline County, Illinois. We find from the evidence, however, that none of the defendants now threaten or intend to make future arrests of Jehovah's witnesses in St. Clair and Saline Counties unless and until advised by state's attorney of said county that the laws are being violated by such Jehovah's witnesses; that the state's attorneys do not threaten or intend to order further arrests unless and until literature that plaintiffs or other Jehovah's witnesses may distribute has been examined and its contents found to be such that in the opinion of the state's attorney its publication has violated said section 471. Fur-

thermore, if said statute is declared unconstitutional by a competent court of the State of Illinois or of the United States said defendants will make no further effort to enforce same.

(27) The defendants, at the time of the arrests, had a reasonable basis for their fear that if plaintiffs and other Jehovah's witnesses who were distributing Watchtower literature in St. Clair and Saline Counties were not restrained that riots, assaults and breaches of the peace would ensue because of resentment against the bitter attacks made in said literature upon all religion and upon the Protestant and Catholic churches and the charges of corruption, deception and disloyalty made against the heads and leaders of said churches.

(28) The evidence fails to show that the plaintiffs and other members of their group or any of them will suffer irreparable injuries or damages of any considerable consequence unless an interlocutory injunction is issued pending final hearing.

(29) Should plaintiffs' complaint be eventually upheld or should the said section 471, chapter 38 of the Illinois Statutes eventually be held unconstitutional, the damages and injuries which the plaintiffs will suffer in the meantime through the enforcement of its provisions will be too slight and inconsequential pending final hearing to warrant an interlocutory injunction by this court restraining the duly qualified and acting law enforcing officers of St. Clair and Saline Counties from enforcing in their communities the provisions of said section 471 in a manner dictated by their honest judgments as lawful and as may be honestly believed by them to be lawful and necessary to preserve the peace and to prevent riots and other disturbances of the peace as well as threatened injury and damage to the public and to individuals and to public and private property.

(30) Plaintiffs are seeking an interlocutory injunction herein to restrain the enforcement, operation and execution of a criminal statute of the State of Illinois (chapter 38, section 471, Revised Statutes of Illinois) by restraining the action of the defendants, some of whom are officers of the

State of Illinois (Spielman Motor Sales Co. *v.* Dodge, 295 U. S. 89) in the enforcement and execution in said counties of St. Clair and Saline, State of Illinois, of said statute, with the meaning of the Act of Congress of June 18, 1910, as amended, (section 266 of the Judicial Code; U. S. C. A. Title 28, section 380) requiring such application to be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge and the other two may be circuit or district judges.

(Signed) EVAN A. EVANS,
Senior United States Circuit Judge.

(Signed) WALTER C. LINDLEY,
United States District Judge.

(Signed) FRED L. WHAM,
United States District Judge.

Dated this 17th day of June, 1941.

Conclusions of Law.

Upon the above and foregoing Special Findings of Fact, the court now states its Conclusions of Law, as follows:

(1) This statutory three judge court, convened as required by section 266 of the Judicial Code, as amended, (U. S. C. A. Title 28, section 380) has jurisdiction of this cause.

(2) The motion of the plaintiffs for an interlocutory injunction should be denied.

(Signed) EVAN A. EVANS,
Senior United States Circuit Judge.

(Signed) WALTER C. LINDLEY,
United States District Judge.

(Signed) FRED L. WHAM,
United States District Judge.

Dated this 17th day of June, 1941.

[Stamp:] Filed June 17, 1941. D. H. Reed, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

Civil Action No. 383.

CECIL BEVINS, et al., *Plaintiffs*,

vs.

"Doc" PRINDABLE, Individually, and as Sheriff of St. Clair County, Illinois, et al., *Defendants*.

Order.

This cause having come on for a hearing before a court duly convened pursuant to Act of Congress of June 18, 1910, as amended, (section 266 of the Judicial Code; U. S. C. A. Title 28, section 380) upon plaintiffs' motion for an interlocutory injunction and upon consideration thereof and of the pleadings and affidavits filed herein and of arguments and briefs of counsel for the respective parties, and formal written findings of fact and conclusions having been filed herein by the court, it is,

Ordered, that said motion be and the same is hereby denied.

Danville, Illinois, June 17, 1941.

(Signed) EVAN A. EVANS,
Senior United States Circuit Judge.

(Signed) WALTER C. LINDLEY,
United States District Judge.

(Signed) FRED L. WHAM,
United States District Judge.

APPENDIX "B".

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY.

London—No. 64.

LOUIS BEELER, et al., *Plaintiffs,*

v.

L. O. SMITH, Individually, and as Mayor of the City of Harlan, Ky., et al., *Defendants.*

Findings of Fact, Conclusions of Law and Judgment.

This cause having heretofore been heard upon the defendants' motion for an interlocutory injunction and a final hearing of the suit having been had upon proof introduced by the parties and the cause being submitted for final judgment to the undersigned, sitting as a District Court of Three Judges, and the Court being advised, makes the following Findings of Fact and Conclusions of Law upon the issues herein presented, to-wit:

Findings of Fact.

1. That the plaintiffs, Louis Beeler, Elmer Hopkins, Lyndell Carr, S. F. Lehman, M. L. Lehman and Elihu Hurst, are citizens and residents of the State of Kentucky and of the United States; that each of them is a member of an organization known as "Jehovah's witnesses" and as such, at the time of the institution of this action and prior thereto, each of them was a duly authorized representative of "Watch Tower Bible and Tract Society", a corporation engaged in printing and publishing various books, tracts, pamphlets, periodicals and magazines, which the plaintiffs and other members of the organization "Jehovah's witnesses", at the time of the institution of this action and prior thereto, were engaged in distributing, selling and otherwise circulating on the streets and public places in the cities, towns and villages of Harlan County and other coun-

ties of the State of Kentucky and in distributing to the residents of the County of Harlan at their homes and elsewhere.

2. That the defendant L. O. Smith is the duly elected and qualified Mayor of the City of Harlan, Harlan County, Kentucky; that the defendant Daniel Boone Smith is the duly elected and qualified Commonwealth's Attorney in and for the District of the State of Kentucky which includes the city and county of Harlan; that the city of Harlan is a municipal corporation duly organized and existing under the laws of the State of Kentucky; that the defendant Harmon Noe is Chief of Police of the city of Harlan; that the defendant Lige Howard is the duly elected and qualified Judge of the Police Court of the city of Harlan; that the defendants Estle Giles and Ben F. Unthank are duly qualified and appointed members of the Police Department of the city of Harlan; that the defendant H. C. Caywood is the duly elected and qualified Sheriff of the county of Harlan, and that the defendant Hubert Meredith is the duly elected and qualified Attorney General of the State of Kentucky.

3. That prior to the institution of this action, on or about the first day of June, 1940, the defendants, other than the defendant Hubert Meredith, Attorney General, acting in their respective capacities as public officers of the city of Harlan, county of Harlan and State of Kentucky, arrested or caused the arrest, imprisonment and prosecution of the plaintiffs upon the charge or charges that by engaging in the distribution, sale and circulation of certain hereinafter described books, tracts, pamphlets, periodicals, magazines and other printed matter the defendants committed the crime of "sedition" in violation of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Ky. Statutes, §§ 1148a-1 to 1148a-14, inclusive), and they have since threatened, under color of said statute and by virtue thereof, to continue to so arrest, imprison and prosecute the plaintiffs and other members of the organization of "Jehovah's witnesses" who may continue to so distribute such printed matter in Harlan County, Kentucky; that by so doing the defendants, other than Hubert Meredith, Attorney General, prevented the plaintiffs and others of "Jehovah's witnesses" from

continuing to exercise the right to engage in, carry on or pursue their business or activities in circulating, selling or otherwise distributing such printed matter in Harlan County, Kentucky.

4. That the printed matter so distributed or proposed to be so distributed and circulated by the plaintiffs consists of the following books, tracts, pamphlets, periodicals, magazines and printed matter printed and published by Watch Tower Bible & Tract Society, Inc., to-wit: Book entitled "Salvation"; Book entitled "Deliverance"; Book entitled "Preservation"; Book entitled "Riches"; Book entitled "The Harp of God"; Book entitled "Religion"; Book entitled "Preparation"; Book entitled "Jehovah"; Book entitled "Creation"; Three-volume set of books entitled "Vindication"; 1940 Yearbook of "Jehovah's witnesses"; Book entitled "Government"; Book entitled "Enemies"; Two-volume set of books entitled "Light"; Book entitled "Prophecy"; Magazine entitled "Consolation", of date December 13, 1939; Magazine entitled "Consolation" of date April 17, 1940; Magazine entitled "Consolation" of date October 4, 1939; Magazine entitled "Consolation" of date April 17, 1940; six copies of magazine entitled "Consolation" of date, respectively, November 29, 1939; April 19, 1939; October 4, 1939; April 3, 1940; April 17, 1940, and May 29, 1940; Magazine entitled "The Watchtower" of date March 1, 1932; Magazine entitled "The Messenger" of date November, 1938; Magazine entitled "Consolation" of date January 10, 1940; Magazine entitled "Consolation" of date February 7, 1940; Printed Sheet entitled "Kingdom News" dated October 1939; Booklet entitled "Home and Happiness"; Book entitled "Choosing Riches or Ruin"; Book entitled "His Works"; Book entitled "Uncovered"; Book entitled "World Recovery"; Booklet entitled "The Final War"; Booklet entitled "Beyond the Grave"; Booklet entitled "Government and Peace"; Booklet entitled "Judge Rutherford Uncovers Fifth Column"; Booklet entitled "Armageddon, the greatest battle of all times; who will survive?"; Booklet entitled "Government, Hiding the Truth, Why?"; Booklet entitled "Protection from those who seek to hurt or destroy me; How can I find it?"; Booklet entitled "Hereafter"; Booklet entitled

"Safety"; Booklet entitled "Fascism or Freedom"; Booklet entitled "Loyalty; Questions and Answers, Whose Servant, Saluting a Flag; Last Days"; Booklet entitled "Refugees"; Booklet entitled "Warning"; Booklet entitled "What You Need"; Booklet entitled "Liberty"; Booklet entitled "Health and Life"; Booklet entitled "What Is Truth?"; Booklet entitled "Dividing the People"; Booklet entitled "Where Are the Dead?"; Booklet entitled "Universal War Near"; Booklet entitled "Favored People"; Booklet entitled "Supremacy"; Booklet entitled "Righteous Ruler"; Booklet entitled "Neutrality"; Booklet entitled "His Vengeance"; booklet entitled "Face the Facts"; Booklet entitled "Conspiracy Against Democracy"; Booklet entitled "Cure"; Booklet entitled "Model Study No. 2"; Booklet entitled "Keys of Heaven"; Booklet entitled "Angels"; Booklet entitled "Who Is God?"; Leaflet advertising the broadcast of Judge Rutherford's Lecture "Government and Peace"; Printed sheet entitled "Informant" dated April, 1938; Printed sheet entitled "Informant" dated May, 1940; Two printed sheets of paper entitled "Informant" dated January, 1940; Printed sheet of paper entitled "Informant" dated February, 1940; Two different printed sheets entitled "Informant", dated March, 1940; Book entitled "1930 Year Book of the International Bible Students Association and Daily Texts and Comments"; Book entitled "The Finished Mystery—The Way to Life and Heaven"; Book entitled "Thy Kingdom Come"; Book entitled "The Battle of Armageddon"; Book entitled "Comfort for the Jews"; Book entitled "Photo-Drama of Creation"; Book entitled "Riches" printed in the Greek language; Book entitled "Creation", printed in the Greek language; Book entitled "Deliverance" printed in the Greek language; Book entitled "Enemies", printed in the Greek language; Booklet entitled "Angels" printed in the Polish language; Book entitled "What Is the Truth?" printed in the Polish language; Booklet entitled "Dividing the People", printed in the Polish language; Book entitled "Prosperity Sure"; Booklet entitled "A Testimony"; Booklet entitled "The Kingdom—The Hope of the World"; Book entitled "Advice for Kingdom Publishers"; Placard reading "Religion is a Snare and a Racket", and Magazine

entitled "Consolation" dated April 3, 1940, copies of all of which literature and publications are filed and identified herein as plaintiffs' exhibits numbers 2-93, inclusive, and defendants' exhibits numbers 1-3, inclusive.

5. That the plaintiffs are fairly representative of the class or group of persons residing in the state of Kentucky and carrying on similar business and activities known as "Jehovah's witnesses".

Conclusions of Law.

1. That the plaintiffs are entitled to maintain this action for and on behalf of themselves and all others embraced in the class or group of persons in Harlan County and the State of Kentucky known as "Jehovah's witnesses".

2. That this Court of Three Judges sitting pursuant to section 266 of the Judicial Code of the United States has jurisdiction of the parties and the subject matter of this action to restrain future arrests, imprisonment or prosecution of the plaintiffs or others of "Jehovah's witnesses" on account of the acts herein described under color of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Kentucky Statutes §§ 1148a-1 to 1148a-14).

3. That this Court is without jurisdiction to enjoin, restrain or otherwise interfere with prosecutions or other criminal proceedings pending in the Courts of the State of Kentucky under the indictments set out in the petition or otherwise instituted therein prior to the institution of this action.

4. That the sale, circulation and distribution of printed matter described in Paragraph No. 4 of the foregoing Findings of Fact do not constitute "sedition" as defined by chapter 100 of the Acts of the Kentucky Legislature of 1920 (Ky. Statutes §§ 1148a-1 to 1148a-14, inclusive), and such activities are not prohibited thereby or in violation thereof.

5. That by threatening to continue to arrest, imprison and prosecute the plaintiffs in the manner and to the extent described and set out in Paragraph No. 3 of the foregoing

Findings of Fact the defendants, other than Hubert Meredith, Attorney General, have deprived the plaintiffs of rights, privileges and immunities secured by the Constitution of the United States; that plaintiffs have no adequate remedy at law and on behalf of themselves and others of "Jehovah's witnesses" they are entitled to a permanent injunction restraining the said defendants from continuing such deprivation.

6. That the provisions of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Ky. Statutes §§ 1148a-1 to 1148a-14) are not applicable or effective to prohibit or interfere with the plaintiffs or others of "Jehovah's witnesses" in circulating, selling or distributing the herein described printed matter and the acts and activities of the plaintiffs in so doing are not violative thereof, therefore the Court concludes it is unnecessary to consider or determine the question presented as to the constitutionality of the Act.

7. That the defendant Hubert Meredith, Attorney General of the State of Kentucky, was not a party to any threats to continue the arrest, imprisonment or prosecution of the plaintiffs or others of "Jehovah's witnesses", and since it is stated in the petition that he "is joined in this suit solely because the plaintiffs attack the validity of a statute of the Commonwealth of Kentucky" this action as to him should be dismissed.

Judgment.

It is therefore ordered and adjudged by the Court as follows:

1. That as to the defendant, Hubert Meredith, Attorney General, this action is dismissed.

2. That the defendants, L. O. Smith, individually and as Mayor of the City of Harlan, Kentucky, Daniel Boone Smith, individually and as Commonwealth's Attorney, the City of Harlan, its agents and officers, Harmon Noe, individually and as Chief of Police of the City of Harlan, Lige Howard, individually and as Police Judge of the City of Harlan, Estle Giles and Ben F. Unthank, individually and as members of the Police Department of the City of Harlan, and

H. C. Caywood, individually and as Sheriff of Harlan County, Kentucky, be and are hereby enjoined and restrained from hereafter arresting, imprisoning or prosecuting the plaintiffs and others of "Jehovah's witnesses" for or on account of circulating, selling or otherwise distributing in a peaceable and orderly manner the literature, books, publications and printed matter listed, identified and described in Paragraph No. 4 of the foregoing Findings of Fact, or by threats or otherwise interfering with such activity on the part of plaintiffs and others of "Jehovah's witnesses", under color of chapter 100 of the Acts of the Kentucky Legislature of 1920 (Ky. Statutes §§ 1148a-1 to 1148a-14, inclusive) or upon the ground that such acts constitute "sedition" in violation of any law, statute or ordinance of the State of Kentucky, provided, however, nothing herein shall be construed to restrain or interfere with the defendants or either of them in the performance of their public duties as officers of the State of Kentucky in the arrest or prosecution of the plaintiffs or other persons for trespass or unlawful entry upon private property or other acts in violation of law of the State of Kentucky, or to restrain or otherwise interfere with the prosecution or other criminal proceedings pending in the courts of the State of Kentucky under the indictments set out in the petition or otherwise instituted therein prior to the institution of this action.

ELWOOD HAMILTON,
Circuit Judge;
H. CHURCH FORD,
District Judge;
MAC SWINFORD,
District Judge.

June 4, 1941.

A copy. Attest:
A. B. ROUSE,
Clerk.

FILE COPY

Office - Supreme Court, U
FILED
AUG 29 1941
CHARLES ELMORE CRO
OLE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, AUSTIN R. SIMCOX, NANCY M. SIMCOX, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, LOUIS P. ZERWECK, GEORGE REMNSNIDER, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTIONS TO DISMISS OR AFFIRM.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois,
GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois,
Counsel for Appellees.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Form of action	2
The statute in controversy	3
Statement of facts	4
There is no substantial constitutional question involved in this controversy	15
Discussion of cases cited by appellants in their jurisdictional statement	31
Motion to dismiss as to appellees Dwight H. Green and George F. Barrett	47
Motion to dismiss or affirm	49

Table of Cases Cited.

Beal v. *Missouri Pac. R. Co.*, 312 U. S. 45, 61 Sup. Ct. 418	17, 29
Beeler v. *Smith*, — Fed. Supp. — (June 4, 1941)	43
Bird v. *Commonwealth*, 124 Va. 833, 98 S. W. 632	27
Block v. *City of Chicago*, 239 Ill. 251	18, 20
Cantwell v. *Connecticut*, 310 U. S. 296	23, 36, 40, 41
Chicago Great Western R. Co. v. *Kendall*, 266 U. S. 94	29
City of Louisiana v. *Bottoms*, 300 S. W. 316	24
Coleman v. *City of Griffin*, 189 S. E. 427	24
Dealk v. *Commonwealth*, 166 Ky. 39, 178 S. W. 129	25
Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479	34
Dire v. *State*, 99 Ga. 20, 25 S. E. 609	27
Erie Railroad Co. v. *Hiet*, 274 U. S. 99	18, 22
Fenner v. *Boykin*, 271 U. S. 240	17, 27
Fiske v. *Kansas*, 274 U. S. 380	41
Fox Film Corp. v. *Collins*, 236 Ill. App. 281	18
Georgia, etc., Power Co. v. *Railroad Commission*, 262 U. S. 625	29
Hague v. *C. I. O.*, 101 F. (2d) 774	31

Page

Herndon v. *Lowry*, 301 U. S. 242 35
Johnson v. *Wells Fargo*, 239 U. S. 234 34
Kennedy v. *City of Moscow* (Idaho), 39 Fed. Supp. 26 42
Knights of Pythias v. *Meyer*, 265 U. S. 30 ..... 18, 21
Lanzetta v. *State*, 306 U. S. 451 35
Lovell v. *City of Griffin*, 303 U. S. 444 41
McMasters v. *State*, 207 Pac. 566 24
Nashville, C. & St. L. Ry. Co. v. *McConnell*, 82 F. (2d) 65 34
Near v. *Minnesota*, 283 U. S. 697 37
Oney v. *Oklahoma City*, — F. (2d) (June 9, 1941) 42
People v. *Downer*, 6 N. Y. S. (2d) 566 43
People v. *Edmonston*, 4 N. Y. S. (2d) 257 43
People v. *Spielman*, 318 Ill. 482 ..... 18, 20
Pierce v. *Society of Sisters*, 268 U. S. 510 ..... 32, 35
Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. —, —, 61 Sup. Ct. 643 ..... 17, 28
Risty v. *Chicago, R. I. & P. Ry. Co.*, 270 U. S. 378 33
Schneider v. *State*, 308 U. S. 147 ..... 39, 41
Smyth v. *Ames*, 169 U. S. 466 33
South Holland v. *Stein*, 373 Ill. 472 42
Spielman Motor Sales Co. v. *Dodge*, 295 U. S. 89 .... 17, 27
Stratton v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530 33
Stromberg v. *California*, 283 U. S. 359 35
Swift & Co. v. *United States*, 276 U. S. 311 32
Terrace v. *Tyompson*, 263 U. S. 197 33
Thornhill v. *Alabama*, 310 U. S. 88 40
United States v. *Cohne Grocery Co.*, 255 U. S. 81 35
Watch Tower Bible & Tract Society v. *Bristol*, 24 Fed. Supp. 57 ..... 17, 18, 28
Watson v. *Buck*, 61 Sup. Ct. 962 ..... 17, 27, 28
Western Turf Ass'n v. *Greenberg*, 204 U. S. 359 18
Whitney v. *California*, 274 U. S. 357 18
Young, Ex parte, 209 U. S. 123 32

STATUTES CITED.

Constitution of the State of Illinois (1870), Article II, Section 3 22
Judicial Code, Section 266 (28 U. S. C. 380) 3, 7, 9

Page

Illinois Revised Statutes (1939), Chapter 38, par. 471 ..... 3, 8, 13, 18
Smith-Hurd Annotated Illinois Statutes, Chapter 38, par. 402 20

TEXT BOOKS CITED.

34 A. L. R. 580 26
48 A. L. R. 97 27
8 Am. Jur. 835, par. 4 26
9 C. J. 392, par. 17 27
11 C. J. S. 825, par. 16 27

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

STATEMENT OF GROUNDS MAKING AGAINST THE JURISDICTION OF THIS COURT, INCLUDING THEREIN, MOTIONS TO DISMISS AS TO CERTAIN APPELLEES, AND MOTIONS TO DISMISS OR AFFIRM AS TO ALL APPELLEES.

Pursuant to Rule 12, Paragraph 3, of the Supreme Court, now comes Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf; and further come Harry J. Flanders, Assistant State's Attorney for Saline County, Illinois, at-

torney for Tom Gram, individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, individually, and as deputy sheriff of Saline County, Illinois, Trafton Dennis, individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, individually, and as Justice of the Peace of Saline County, Illinois; and further comes Georg F. Kelling, Assistant State's Attorney for St. Clair County, Illinois, attorney for "Doc" Prindable, individually, and as sheriff of St. Clair County, Illinois, Louis P. Zerweck, individually and as State's Attorney of St. Clair County, Illinois, George Remnsnider, individually, and as Mayor of the city of Belleville, Illinois, Thomas Lonie, individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, individually, and as Justice of the Peace of St. Clair County, Illinois, all appellees in the above entitled cause, and file this, their Statement of Grounds Making Against the Jurisdiction of this Court, therein, motions to dismiss as to certain appellees, and motions to dismiss or affirm as to all appellees.

For convenience of this Court, and to save useless repetition, all of the appellees herein have joined in this, their said Statement, and have set forth matters and grounds making against the jurisdiction of the Supreme Court which they, and each of them, believe sufficient to enable this Court to determine that it has no jurisdiction, or that this said appeal should be dismissed, or in the alternative that final decree of the court below be affirmed, as per motions of the said appellees submitted herewith.

A.

Form of Action.

The appellants (plaintiffs in the court below), who are members of a religious cult known as "Jehovah's Witnesses" sought, by the way of injunction, pursuant to the statute of the United States, Section 266 thereof as amended

(28 U. S. C. A. 380), to restrain the appellees, who were State and county officials of the State of Illinois (defendants in the court below), from enforcing a certain Illinois penal statute (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939); the said appellants contending that the said statute was unconstitutional, void and indefinite in its terms.

Pursuant to the provisions of the above statute (28 U. S. C. A. 380) a three judge court was assembled in the District Court of the United States, in the Eastern District thereof. All of the appellees herein filed motions to dismiss. Affidavits and briefs of all parties were filed and a hearing had on the motion for an interlocutory injunction.

On June 17, 1941, the District Court entered its order denying the motion for an interlocutory injunction, made special findings of fact, and filed its memoranda, suggesting that as the matters to be considered by the court had been fully presented by the pleadings, admissions and affidavits of the parties, that if the parties so stipulated, the application for an interlocutory injunction might be considered as a final hearing on the merits.

Pursuant to the suggestions of the court, a stipulation was filed that the findings of the court with reference to the interlocutory injunction be considered as a final hearing and this appeal, filed August 1, 1941, followed.

B.

The Statute in Controversy.

The statute in question (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939), claimed by the appellants to be unconstitutional, null and void, indefinite and uncertain, is as follows:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama

or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00)."

C.

Statement of Facts.

We believe in the statement of facts made by the appellants herein that many conclusions of facts have been therein stated not warranted by the pleadings, admissions and evidence in the case. These appellees, therefore, believe it necessary to make a restatement of these facts. We believe that the facts, as found by the Court below, present a fair and impartial resume of the pleadings, admissions and evidence adduced at the trial of this cause and as found by the Court in its finding of facts and in its opinion. The appellees, therefore, in restating the facts herein have adopted, in substance, the facts as found by the Court.

The appellants, (plaintiffs in the court below) members of an unincorporated body known as "Jehovah's Witnesses", belong to a religious cult or sect, each of the said members claiming to be an ordained minister of Jehovah God, and holding credentials from the Watchtower Bible and Tract Society, a New York corporation publishers for "Jehovah's Witnesses". Each of the appellants, as ordained ministers, engage in preaching the gospel of God's Kingdom from house to house and publicly in the street and distribute literature printed by the Watchtower Bible and Tract Society, Incorporated, a New York corporation, and

the Watchtower Bible and Tract Society, a Pennsylvania corporation, said literature being in the form of books, booklets, and periodicals of various titles and issues. These publications are delivered to people in the streets or homes canvassed, either making outright gifts of the publications or receiving contributions from the recipients for such publications. In disseminating their religious views and beliefs they use portable phonographs and play records to persons who will listen. The literature published by the Watchtower Bible and Tract Society was distributed in St. Clair and Saline Counties by "Jehovah's Witnesses", acting as full or part time ordained ministers of the gospel. From time to time the "Jehovah's Witnesses" came from surrounding counties in Illinois and Missouri and assembled and worked with those in St. Clair County and in the City of Belleville, situated in the County of St. Clair, in large groups. As many as 500 are affected by the situation in St. Clair County, of which complaint is made. It was their frequent practice to assemble and work together in large numbers in various communities. They expect trouble and interference and have agents whose duties are to check interference and provided means of legal counsel when necessary. (Finding of Fact No. 18, Court below.)

The appellants interpret certain passages of the Bible in which they claim, according to such interpretation, that there will be a complete destruction of all religious, commercial and political institutions, and a wholesale slaughter of unchristian people, all of which will be committed by an invisible army of the Lord at the great "Battle of Armageddon". The literature published by the Watchtower Bible and Tract Society, and distributed by the "Jehovah's Witnesses", admittedly is an attack upon religion as practiced today and at all times since man has been on earth. Certain of the literature attempts to set forth the true distinction between all religion and the true worship or service of

Almighty God. The literature attempts to expose the present day religion, both Protestant and Catholic, as a snare and a racket of the very worst kind, and the appellants claim that the religion, as practiced today, is in no way related to, or a part of, the true worship of Almighty God. The literature distributed by the appellants denounce and attack all organized religion, Catholic and Protestant alike. The Catholic Church, in particular, is charged with being wilfully and deliberately engaged in a racket imposed upon its members by wilful deception, and is charged with disloyalty to the United States, and with being in league or combination with the Fascists and Nazis, and engaged in a conspiracy to gain political control of the world and all nations of the world. The literature further charges that the Catholic Church has disloyal designs and keeps arms and ammunition in their churches and buildings.

Illustrative of the shocking nature of the charges made in this literature are excerpts from the same found in Paragraph 19 in the Statement of Facts of the Court below.

There are three groups of appellees in this case.

The first group is comprised of George F. Barrett, as Attorney General of the State of Illinois, and Dwight H. Green, as Governor of the State of Illinois, who, according to the said complaint, are both sued in their official capacities, (Paragraphs 13 and 14, Appellants' complaint.) The appellees, Dwight H. Green and George F. Barrett, according to the allegations contained in appellants' complaint, did not personally participate in any of the alleged wrongs committed against the appellants. The appellants, (plaintiffs in the Court below) charge that the said appellees, Dwight H. Green and George F. Barrett, are joined as defendants only in their official capacity as Governor and Attorney General, respectively, of the State of Illinois, solely because the validity of a State statute was involved,

and because it is claimed by the said appellants that the said Dwight H. Green and George F. Barrett are indispensable parties defendant.

Section 266, Judicial Code, amended, 28 U. S. C. A. 380, provides for the application for an interlocutory injunction, and it is therein provided:

> "Said application shall not be heard or determined before at least five days notice of the hearing *has been given to the Governor and the Attorney General of the State* and to such other persons as may be defendants in the suit."

The Court below, in its opinion with reference to the appellees Dwight H. Green and George F. Barrett, said:

> "The defendants, Dwight H. Green and George F. Barrett, Governor and Attorney General, respectively, of the State of Illinois, urge that, since the complaint avers that neither of them actually participated in the alleged wrongs of which complaint is made and that neither of them have made threats of future action against the plaintiffs, they are not proper parties defendant. Whether or not they are indispensable parties, as contended by plaintiffs, or even necessary parties, we are of the opinion that in view of the fact that plaintiffs attack the constitutionality of a statute of the State of Illinois and seek to enjoin its enforcement said defendants, in their official capacities, are proper parties. (28 U. S. C. A. 380; *Arneson* v. *Denny*, 25 F. 2d 993.) Since these defendants are not charged with having actually done or threatened to do anything of which plaintiffs complain the term 'defendants' when used hereafter will refer to the other defendants only."

The second group of appellees embraces the defendants of St. Clair County, which include "Doc" Prindable, the Sheriff; Louis P. Zerweck, the State's Attorney; George Remnsnider, the Mayor of the City of Belleville; Thomas

Lonie, Chief of Police of the City of Belleville, and Anthony J. Stoeckel, a Justice of the Peace of St. Clair County.

The third group of appellees embraces all Saline County, Illinois, officials, including Tom Gram, Sheriff of Saline County; Jack O. Edwards, Deputy Sheriff of Saline County, and Commander of the American Legion Post at Harrisburg, Illinois; Luke Barnhill, Justice of the Peace of Saline County; and Trafton Dennis, who became State's Attorney of Saline County on December 2, 1940, succeeding Lloyd H. Melton.

The appellants herein sought to restrain the appellees, (defendants in the court below) from arresting, prosecuting, or threatening to arrest and prosecute any of the "Jehovah's Witnesses" under and by virtue of a certain statute of the State of Illinois, known as Chapter 38, Section 471, Illinois Revised Statutes, 1939, which said statute was as follows: (Repeated here for the convenience of the Court.)

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama, or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color or creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00)."

The appellants contend that the above described statute is unconstitutional and void on its face, and is vague and indefinite because it unlawfully denies and deprives the appellants and others of "Jehovah's Witnesses" of civil

rights, freedom of speech, of peace, and of assembly and freedom to worship the Almighty God according to the dictates of their consciences or contrary to the Federal Constitution, Fourteenth Amendment, Section 1.

All of the appellees in the Court below filed motions to dismiss, supported by briefs and affidavits, and a three judge court having been assembled pursuant to Section 266, Judicial Code, amended, (28 U. S. C. A. 380) after a hearing, considered the appellants' prayer for a preliminary injunction, seeking to restrain the appellees from enforcing the statute above described, or from arresting, interfering with or prosecuting appellants, or other of "Jehovah's Witnesses" on account of their activities in distributing books, booklets, periodicals and other works.

The court below, on June 17, 1941, after a consideration of the pleadings, admissions contained therein, affidavits, arguments and briefs of counsel for the respective parties, denied appellants' motion for a preliminary injunction, and the court below further said in its memorandum:

> "The situation is fully disclosed by the pleadings, the affidavits, and the admissions. It would seem that the parties might stipulate that the hearing on the application for temporary injunction be viewed as an application for a permanent injunction."

Pursuant to this suggestion of the court, the parties herein stipulated that the determination on the hearing for a preliminary injunction should be considered as a final hearing for a permanent injunction, and accordingly an appeal was taken to this court.

The court below, in its findings of fact (Paragraph 21) found that the members of "Jehovah's Witnesses" were distributing literature published by the Watchtower Bible and Tract Society in St. Clair County, Illinois, in June

1940; that the Sheriff of St. Clair County and the Mayor and Chief of Police and members of the police force of the city of Belleville, began to receive telephone calls from numerous persons who objected to the literature being distributed by the appellants and complained that the literature attacked all religion, holding the religion up to contempt, derision and obloquy, and such persons stated that, "unless the distribution of such literature was stopped there would be trouble, and that such persons would be taken off the streets in ambulances". The court further found that in a neighboring city of Litchfield the "Jehovah's Witnesses" had distributed similar literature, as the result of which, a serious riot was incited and a mob, estimated at one thousand persons, assembled, violent assaults and sluggings occurred, many persons were injured, and much property damage resulted. That in order to quell the riot it was necessary to call out the Illinois State Police Riot Squad. That the said county and city officials knew from these reports that the distribution of the literature by the "Jehovah's Witnesses" had caused mobs and rioting in other localities and "honestly believed that immediate danger of riot, breach of peace, and personal injury to said 'Jehovah's Witnesses' and others" might occur as a result of their distribution of literature in Belleville in St. Clair County. The members of the police force of Belleville investigated the activities of the "Jehovah's Witnesses" in the said city, and a number of the said "Jehovah's Witnesses" were arrested and detained by the said officials "with the honest belief that their activities in distributing the literature was in violation of Section 471, Chapter 38 of the Revised Statutes of the State of Illinois". That the said officials, also "with the honest belief that riots and disturbances of the peace were imminent, and that the safety of persons and property in the community was seriously endangered due to said activities of "Jehovah's Wit-

nesses". Complaints were filed in St. Clair county, which were, in substance and form, as follows:

> "The complaint and information of R. V. Gustiv, Assistant State's Attorney in said County, made before Anthony J. Stoeckel, Esquire, one of the Justices of the Peace in and for said County, who being duly sworn, upon his oath says that Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers on, towit: the 31st day of August 1940, at the County aforesaid then and there unlawfully advertise, sell or offer for sale a certain sketch which publication portrays depravity, criminality, unchastity or lack of virtue of a class of citizens belonging to the Roman Catholic religion, which said publication exposes the citizens of said religion to contempt, derision or obloquy and which is productive of breach of the peace or riot contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.
>
> That this complainant has just and reasonable grounds to believe, and does believe that the said Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers committed said offense, and therefore prays that, (same named offenders) may be arrested and dealt with according to law."

The court below further found in its Finding of Facts (Paragraph 22) that all of those arrested were given the privilege of making bonds, that none of those arrested were "maltreated, assaulted or otherwise dealt harshly with in any physical way". The Court further found that none of the cases in Belleville and St. Clair County have been tried, but all (approximately twenty-three in number) are still pending. The court further says:

> "There appears to have been no effort on the part of anyone to secure a determination of the cases. No reason appears which should prevent an early trial of the cases and determination on appeal, if desired."

In Saline County, at the city of Harrisburg in that county, the occurrences complained of by the appellants consisted of arrests under facts similar in substance to those in Belleville, and in St. Clair County, except that the cases at Harrisburg were brought to trial. The court below further found that all of the Saline County defendants played an official part in the arrest, arraignment and trial of three "Jehovah's Witnesses", namely, Cecil Bevins, Austin R. Simcox and Nancy M. Simcox. That the acts and conducts of the said "Jehovah's Witnesses", which led to their arrests and prosecutions in Harrisburg, were similar to the acts and conducts which led to the arrests and complaints in Belleville. In the Saline County cases, which were brought to trial in Harrisburg, the complaints, in substance, were as follows:

> "Did unlawfully present and exhibit a certain sketch and publication, which said publication portrayed lack of virtue in the Catholic and Protestant religions, and did then and there expose the believers in those religions to contempt and derision and which was productive of a breach of the peace and riots."

The appellees were found guilty and all of them appealed to the Circuit Court of Saline County, where their said causes are now pending on appeal.

The court further found that "nothing appears which has prevented or should hereafter prevent an early final determination of the cases in the State courts, if that is desired."

The court below found that the acts of the Saline County officials were official acts of such appellees, performed in good faith and "in an honest effort to carry out their official duties and to preserve the peace". That the said Saline County officials, in good faith, prosecuted the appellants for their acts and conduct which they verily believed

constituted violations of Chapter 38, Section 471, Illinois Revised Statutes.

The court further found (Paragraph 26) "that none of the defendants now threaten or intend to make future arrests of "Jehovah's Witnesses" in St. Clair and Saline Counties unless and until advised by State's Attorney of said county that the laws are being violated by such 'Jehovah's Witnesses'."

There is no showing in the record that there were any arrests, trials, or convictions other than those above referred to.

The court, in its Findings of Fact, further found, (Paragraph 27) that the appellees had reasonable basis for their fear; that if the appellants and other of the "Jehovah's Witnesses" who were distributing literature in St. Clair and Saline Counties were not restrained that *riots, assaults* and *breaches of the peace* would ensue "because of resentment against the bitter attacks made in said literature upon all religion and upon the Protestant and Catholic churches and the charges of corruption, deception and disloyalty made against the heads and leaders of said churches" (Paragraph 27, Finding of Facts).

The court below further found, as a fact, that the appellants and other members of their groups would not suffer "irreparable injuries or damages of any considerable consequence" if an interlocutory injunction was not granted pending final hearing. The court below further found that the officials and law enforcing officers of St. Clair and Saline Counties were enforcing in their communities the provisions of Section 471, Chapter 38 of the Illinois Statute in a manner dictated by their honest judgments "as lawful" and "as honestly believed by them to be lawful and necessary to preserve peace and prevent riots and other disturbances of the peace, as well as threatened injury to

public and to individuals and to public and private property."

The court below, in its memorandum, said:

> "Furthermore, it does not appear from the evidence that it is essential for the plaintiffs (appellants herein) to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their ministry."

The court below further said, in its memorandum:

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say that it is not clearly apparent that the statute in question is unconstitutional. Plaintiffs say it is vague and indefinite. There is truth in the charge but the statute deals with a type of offense that defies exact definitiveness. In that respect it is similar to statutes creating the offense of criminal libel. (Chapter 38, Section 402, Illinois Revised Statutes 1939.) Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question for the Courts of Illinois."

The court below, in its memorandum, further said:

> "The record shows that there are a score or more of cases against plaintiffs pending in the courts of Illinois, each presenting an opportunity for a speedy determination of the validity, meaning and proper application of the statute in question, in so far as plaintiffs' rights are affected. Should the decision of the Illinois Courts be unsatisfactory a review of the Federal questions by the Supreme Court of the United States will be available. In our view of the case, under the evidence now before the court, the circumstances are not of that exceptional character that justifies an interference by the Federal courts when the way is open for plaintiffs to secure a prompt adjudication of their rights in the courts of Illinois.

> Plaintiffs assert that they have not violated the Illinois statute in question when properly construed. The Illinois Supreme Court alone can declare with final authority the meaning and applicability of the statute."

The court, in its memorandum, then considered the question of whether or not the appellants, by the enforcement of the statute, would sustain irreparable loss, and said:

> "We think the question must be answered in the negative and the application for interlocutory injunction denied."

D.

There is No Substantial Constitutional Question Involved in This Controversy.

The court below so held, in substance, when it found:

1.

That it was unnecessary under the evidence for that court to consider the constitutionality of the State statute, but that had the court found it necessary to pass upon the constitutionality of the statute it would have found that it was not clearly unconstitutional.

2.

That whether the statute in question was unconstitutional "would seem to be first a question for the Courts of Illinois."

3.

That the general equity rule was applicable, *i. e.*, a court of equity will not interfere to prevent the enforcement of a criminal statute only under extraordinary circumstances where the danger of irreparable loss is both great and immediate.

4.

That the danger of irreparable loss to the appellants was neither great nor immediate.

5.

That such loss to the appellants as may be threatened can be obviated in a large measure, if the appellants desire, by seeking a constitutional construction of the statute in the Illinois courts.

6.

That Federal courts are reluctant to construe or pass upon the validity of a State statute, or a principle of law involving State policies or local property rules when the construction or application of such statute or principle may remove all constitutional objections, and particularly, in the instant case, where such determination can readily be obtained in the State courts.

7.

That the contention of the appellants that they have not violated the State statute, if properly construed, is unsound, the court finding that the final authority to determine the meaning and applicability of the State statute was for the Illinois courts.

We feel that the following propositions of law, and the authorities cited in support thereof, fully sustain the action of the trial court, and refute the grounds upon which the appellants ask that this Court take jurisdiction of this cause.

I

Equity will not interfere to prevent the enforcement of a State criminal statute, even though unconstitutional, unless it be under exceptional circumstances where the danger of

irreparable loss is both great and immediate, and only then upon a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights.

Spielman Motor Co. v. *Dodge,* 295 U. S. 89-95.
Railroad Commission of Texas v. *Pullman Co.,* 312 U. S. —, 61 S. Ct. 643, 644-645.
Beal v. *Missouri Pac. R. R.,* 312 U. S. 45, 61 Sup. Ct. 418, 421.
Fenner v. *Boykin,* 271 U. S. 240.
Watch Tower Bible & Tract Soc. v. *City of Bristol,* 24 F. S. 57, Aff'd without opinion 305 U. S. 572.
Watson v. *Buck,* — U. S. —, 61 Sup. Ct. 962-966.

The Court in its memoranda found that the danger of irreparable loss was neither great nor immediate, saying:

> "Here the danger of irreparable loss is neither great nor immediate and such loss as may be threatened can be obviated in large measure by the plaintiffs themselves, if they so desire, pending the hearing of the case on its merits or the authoritative construction of the statute by the courts of the State."

The court further said that there were no exceptional circumstances in the case warranting the intervention of a court of equity, saying:

> "The record shows that there are a score or more of cases against plaintiffs pending in the courts of Illinois each presenting an opportunity for a speedy determination of the validity, meaning and proper application of the statute in question in so far as plaintiffs' rights are affected. Should the decision of the Illinois courts be unsatisfactory a review of the Federal questions by the Supreme Court of the United States will be available. In our view of the case, under the evidence now before the court, the circumstances are not of that exceptional character that justifies an interference by the Federal courts when the

way is open for plaintiffs to secure a prompt adjudication of their rights in the courts of Illinois."

In view of the rule of law laid down in the cited cases and the facts as found by the court below, we do not believe that this Court is warranted in assuming jurisdiction herein.

II

The statute in question is a valid exercise of police power of the State and has been so construed by the Courts of Illinois.

Fox Film Corp. v. *Collins,* 236 Ill. App. 281-294.
Block v. *City of Chicago,* 239 Ill. 251.
People v. *Spielman,* 318 Ill. 482.
Knights of Pythias v. *Meyer,* 265 U. S. 30-32.
Erie Railroad Co. v. *Hiet,* 274 U. S. 99, 100-101.
Watch Tower Bible & Tract Soc. v. *City of Bristol,* 24 F. Supp. 57, Aff'd without opinion, 305 U. S. 572.
Whitney v. *California,* 274 U. S. 357.
Western Turf Ass'n v. *Greenberg,* 204 U. S. 359.

The validity of the statute in question was considered in *Fox Film Corp.* v. *Collins,* 236 Ill. App. 281, where that court had before it the consideration of the validity of an ordinance of the City of Chicago, which was in the words of the statute (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939), except the words "immoral" and "obscene" were added to the ordinance.

The court said, (page 286) concerning this ordinance:

> "In 1922, the City of Chicago, following quite closely the text of the amended statute, passed an ordinance (Section 2787, Chicago Municipal Code 1922) which provided that if a picture for the showing or exhibition of which an application for a permit is made 'is immoral or obscene, or portrays depravity, criminality or lack of virtue, of a class of citizens of any race, color,

creed or religion and exposes them to contempt, derision or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it shall be the duty of the superintendent of police to refuse such permit, otherwise it shall be his duty to grant such permit.' The words 'immoral or obscene' are not in the statute."

The court then said (Pages 289-290), concerning its validity:

"The question then arises, do the new matters contained in section 2787 render the ordinance invalid. They were put in, apparently, to have the ordinance comply in substance with the Criminal Code. In addition to the words 'immoral or obscene' they are as follows: (1) Pictures which portray depravity, criminality or lack of virtue of a class of citizens of any race, color, creed or religion and expose them to contempt, derision, or obloquy; (2) those which tend to produce a breach of the peace or riots; and (3) those purporting to represent any hanging, lynching or burning of a human being. Of course it may be a question whether or not the word 'immoral' as used in the earlier and in the present ordinance and sanctioned by the *Block* case, is not in and of itself of sufficient connotation to include all the other matters now recited in section 2787, but, however, that may be, we are of the opinion that the added matters do not make the section invalid. In determining whether a picture portrays depravity of a class and exposes them to obloquy, or portrays matters tending to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it does not require any more knowledge or the exercise of any more difficult judgment than in determining whether a picture is immoral or obscene; yet the determination of the latter, pursuant to an ordinance, has already been approved, as we have stated above, in the *Block* case. In our judgment, none of the added matters makes the section invalid."

The *Block* case therein referred to by the court is *Block* v. *City of Chicago,* 239 Ill. 251, wherein a similar ordinance was held valid.

The court below, in its memoranda filed with appellants' jurisdictional statement, said with reference to the validity of the statute in question:

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say that it is not clearly apparent that the statute in question is unconstitutional. Plaintiffs say it is vague and indefinite. There is truth in the charge but the statute deals with a type of offense that defies exact definitiveness. In that respect it is similar to statutes creating the offense of criminal libel. (Chapter 38, Section 402, Illinois Revised Statutes 1939.)"

It should be noted that the court therein referred to the Illinois statute pertaining to criminal libel.

The statute referred to is as follows (Chapter 38, Paragraph 402, Smith-Hurd Annotated Illinois Statutes):

> "A libel is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or financial injury. (1874, March 27, R. S. 1874, p. 348, Div. 1, Par. 177.)"

The Supreme Court of Illinois had before it for consideration the "libel" statute above referred to in the case of *The People* v. *Spielman,* 318 Ill. 482. In this case the newspaper printed a scurrilous and defamatory article concerning the American Legion. The Supreme Court said (Page 489):

> "Criminal liability for libels rests upon their tendency to provide breaches of the peace. (*State* v. *Avery,*

7 Conn. 266; *Kennerly* v. *Hennessy*, 68 Fla. 138; *Newell* on Slander and Libel, 4th ed. secs. 804, 807, 827; 4 Sharswood's Blackstone's Com. P. 151; 3 Wharton's Crim. Law,—11th ed., secs. 1915, 1916; 1 Bishop's Crim. Law —9th ed.—sec. 540.) The libel need not be on a particular person. It may be upon a family, class, corporation or other body. (*State* v. *Brady*, 44 Kan. 435; *Crane* v. *State*, 14 Okla. Crim. 30; *State* v. *Hosmer*, 142 Pac. (Ore.) 581; *Jones* v. *State*, 38 Tex. Crim. 364; *Palmer* v. *City of Concord*, 48 N. H. 211; *Rex* v. *Osborne*, 2 Barn. K. B. 138.) A libel upon a class or group has as great a tendency to provoke a breach of the peace or to disturb society as has a libel on an individual, and such a libel is punishable even though its application to individual members of the class or group cannot be proved. *Rex* v. *Osborne, supra; People* v. *Gordon*, 219 Pac. (Cal.) 486; *State* v. *Brady, supra.*"

In *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32, this Court said:

"Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the State legislation, as though such meaning had been specifically expressed therein. See, for example, *Leffingwell* v. *Warren*, 2 Black 599, 603; *Green* v. *Lessee of Neal*, 6 Pet. 291, 297-300; And we follow the state construction even though it may not agree with our own opinion. *Supervisors* v. *United States*, 18 Wall. 71, 82; *Shelby* v. *Guy*, 11 Wheat. 361, 367; *Tioga R. R.* v. *Blossburg & Corning R. R.*, 20 Wall. 137, 143."

It is true that the Illinois Supreme Court has not directly passed upon the statute in question, but in passing on similar statutes it has so clearly defined its position that it seems inescapable that if it were required to pass upon the exact statute that it would sustain its validity. This seems apparent from what has been said in the foregoing cases.

In addition, the Appellate Court of Illinois, an intermediate court of that State, in *Fox Film Corp.* v. *Collins*, 236 Ill. App. 281, passed directly on the validity of this statute.

In *Erie Railroad Co.* v. *Hiet*, 247 U. S. 99, 100-101, this Court, with reference to its attitude in adopting the interpretation placed upon a statute by an intermediate State court, said:

> "The words of the statute seem to us to require a different construction from that adopted and they have been given their full literal meaning by the Supreme Court of the State in the case of an infant younger than the plaintiff. *Barcolini* v. *Atlantic City & Shore R. R. Co.*, 82 N. J. L. 107. In view of the importance of that tribunal in New Jersey, although not the highest court in the State, we see no reason why it should not be followed by the Courts of the United States, even if we thought its decision more doubtful than we do."

Under these circumstances this Court would be amply justified in declining to accept jurisdiction in this case.

The appellants have not been deprived of their right to worship God in accordance with the dictates of their own consciences, or denied any other of their constitutional rights. The constitutional guarantee of religious freedom does not include the right to wilfully violate the laws.

The policy of the State of Illinois, with reference to its guarantee of religious freedom, is set forth in its Constitution (Section 3, Article II, Illinois Constitution 1870), as follows:

> "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; *but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or*

> *justify practices inconsistent with the peace or safety of the state.* No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." (Italics ours.)

The court below aptly said, in its memoranda filed herewith:

> "Furthermore, it does not appear from the evidence that it is essential for the plaintiffs to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their ministry."

It affirmatively appears from the Special Finding of Facts by the court below that as a result of similar activities on the part of the appellants in localities near or adjacent to St. Clair and Saline counties that serious riots occurred, resulting in serious injury to a number of persons, and destruction of property, necessitating the calling of the Illinois State Police Riot Squad to quell the riot, but the appellants attempt to meet these contentions by saying that if breaches of peace or riots occurred as a result of their scurrilous attack upon religion and the Catholic Church and its doctrines, that it is no fault of theirs, but is the fault of the people who were offended by the literature thus distributed. This position is refuted in one of appellants' own cases; *Cantwell* v. *Connecticut,* 310 U. S. 296, where this Court said (p. 308):

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts *but acts and words likely to produce violence in others.* No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the

> privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious." (Italics ours.)

And this Court has said:

> "A party's religious belief cannot be accepted as a justification for committing an overt act made criminal by the law of the land. *Reynolds* v. *U. S.*, 98 U. S. 145."

And the courts of the various States have enunciated similar doctrines. (See: *City of Louisiana* v. *Bottoms*, 300 S. W. (Mo. App.) 316, 318; *Coleman* v. *City of Griffin*, 189 S. E. (Ga.) 427, 429; *McMasters* v. *State*, 207 P. (Okla. App.) 566, 568-569.)

The appellants in St. Clair County, Illinois, were charged with statutory misconduct under the State statute which was "productive of the breach of peace or riot contrary to the form of the statute, * * *."

In Saline County the complaints filed against the appellants charged the said appellants with breach of the peace. The complaints included, in addition to the statutory charge, a further allegation, which, in substance, was as follows: "* * * which was productive of breach of peace and riots".

From time immemorial, controversies have raged between religious sects and believers. The contention of the appellants that theirs is the only true religion is not a novel or original theory. The Catholic, the Protestant, the Jew, the Mohammedans, and the followers of Confucius have made this same contention through the ages. It is a matter of knowledge so general that this Court will take judicial notice of the fact that a man's religion is instilled in him from his birth. It can be safely said that as a general

rule the teachings to the child will be the belief of the adult, and so thoroughly do parents instill in the minds of their children the sanctity of God in accordance with their beliefs that an insult to one's religion or its doctrines is more likely to provoke ill-feeling, breach of the peace, and riots than possibly any other known form of discussion. And we earnestly believe that the trial court adopted the correct view when it said that, in its opinion, the appellants could properly carry on their religious work without conducting a tirade and campaign of hatred against all religions.

In *Dealk* v. *Commonwealth*, 166 Ky. 39, 178 S. W. 129, a breach of the peace was defined in the following terms:

> "In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke, or excite others to break the peace. By 'peace' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society. It is, so to speak, that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. If it were, communities might be kept in a constant state of turmoil, fear and anticipated danger from the wicked language and conduct of a guilty party, not only destructive of the peace of the citizens but of public morals without the commission of the offense. The good sense and morality of the law forbid such a construction."

In that case a minister of the gospel was arrested and charged with breach of the peace in using "obscene, vulgar

and indecent language" in the presence of an assembly of people, including women and children. The Supreme Court of Kentucky, in sustaining the conviction, aptly said:

> "The appellant's excuse that he was merely rebuking the sin of impurity; that he did not intend to disturb or embarrass any one, but made the statement as a warning and rebuke to sin, is wholly without justification.
>
> It does not avail appellant for him to say he has a right to propagate his religious views. That right is not denied; but one will not be permitted to commit a breach of the peace, under the guise of preaching the gospel."

It is a well known fact that the same act or conduct may be a breach of peace in one community or locality, and would not be considered so in another community or locality. In the *Dealk* case, *supra*, it was said on this point:

> "It is well known that an Act which if committed at a certain place or time would not amount to a breach of the peace might well be considered as a crime if committed at another time or place, and under different circumstances. People *v.* Johnson, 86 Mich. 175, 48 N. W. 879, 24 Am. St. Rep. 116, 13 L. R. A. 163."

See also: 8 Am. Jur. 835, Par. 4.

The observation made in the annotation in 34 A. L. R. 580, is pertinent where it is said:

> "Where a local act prohibited the use of threatening, abusive and insulting words and behavior in the streets whereby a breach of the peace might be occasioned, and a Protestant lecturer had held meetings in public places, causing large crowds to assemble and obstruct the streets, and in addressing those meetings had used gestures and language which were highly insulting to the religion of the Roman Catholic inhabitants, of whom there were many in the city, it was held that he was

properly required to give security to be of good behavior. Wise *v.* Dunning (1902), 1 K. B. (Eng.) 167, 71 L. J. K. B. N. S. (65, 66 J. P. 212, 50 Week. Rep. 317, 85 L. T. N. S. 721, 18 Times L. R. 85, 20 Cox, C. C. 121—Div. Ct."

In *Bird* v. *Commonwealth*, 124 Va. 833, 98 S. W. 632; *Dire* v. *State*, 99 Ga. 20, 25 S. E. 609; it was held, in substance in those cases, that in the prosecution for acts productive of or intending to produce a breach of the peace the truth of the word spoken was no defense.

It is a general rule that, in prosecutions under breach of peace statutes, it is a question of fact to be determined by the jury under all the circumstances whether or not the defendant breached the peace. (See: 9 C. J. 392, Par. 17; 11 C. J. S. 825, Par. 16.) In 48 A. L. R. 97, in discussing this general class of cases the annotator has collected a large number of cases (pages 97 to 102) sustaining in substance the general rule that in prosecutions for breach of peace, whether or not the peace has been breached, is a question of fact.

It appears from the Special Findings of Fact and from the Memorandum in the court below, that the appellants had full, complete and ample opportunity to test the validity of this statute under the courts of Illinois. They have been apparently reluctant to submit to a jury of their peers in Illinois the question of fact whether there was, in fact, a breach of peace committed by them.

III.

The proper method to restrain the enforcement of penal provisions of State statutes is to exhaust the remedies in the State court and then appeal to this Court.

Watson v. *Buck*, — U. S. —, 61 S. Ct. 962-967;
Spielman Motor Co. v. *Dodge*, 295 U. S. 89-95;
Fenner v. *Boykin*, 271 U. S. 240;

Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. —, 61 S. Ct. 643, 644;
Watch Tower Bible & Tract Soc. v. *City of Bristol*, 24 F. Supp. 57, aff'd. without opinion, 305 U. S. 572.

The court below adopted this view when it said:

> "Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question for the courts of Illinois. This statute does not subject the plaintiffs to 'previous restraint' such as received the condemnation of the Supreme Court in *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496; *Cantwell* v. *Connecticut*, 310 U. S. 296 and in *Schneider* v. *State*, Supreme Law ed. Advanced Opinions, Vol. 84, p. 115. It requires no license for seeking contributions or for distribution of literature and no administrative censorship is provided. Until the statute has actually been violated or reasonable grounds exist for believing that the statute has been violated or that such violation is imminent, there can be no proper official interference with the distribution of the literature and such interference must be limited to the distribution of literature that offends the statute. It does not condemn publication of all literature as did the ordinance condemned in *Lovell* v. *Griffin, supra*, but is limited to publications having the nature and content described in the statute."

In the recent case of *Watson* v. *Buck, et al.*, — U. S. —, 61 S. Ct. 962-966, this Court adopted this view when it said:

> "The clear import of this record is that the court below thought that if a federal court finds a manysided state criminal statute unconstitutional, a mere statement by a prosecuting officer that he intends to perform his duty is sufficient justification to warrant the federal court in enjoining all state prosecuting officers from in any way enforcing the statute in question. Such, however, is not the rule. 'The general rule is that equity

will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. * * * We have said that it must appear that "the danger of irreparable loss is both great and immediate"; otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions.' *Spielman Motor Sales Co.* v. *Dodge,* 295 U. S. 89, 95, 96; 55 S. Ct. 678, 680, 681; 79 L. Ed. 1322."

IV.

The court below, after a full hearing, denied appellants relief on the grounds sought. This Court has held that the discretion of the court in refusing or granting such injunctions will not be disturbed by this Court in the absence of a very clear case against it.

Beal v. *Missouri Pacific R. R.*, 311 U. S. —, 61 S. Ct. 418; *Chicago Great Western R. Co.* v. *Kendall,* 266 U. S. 94; *Georgia, etc. Power Co.* v. *Railroad Commission,* 262 U. S. 625.

In *Beal* v. *Missouri Pacific R. R. Corporation,* — U. S. —, 61 S. Ct. 418, at 420-421, this Court said on this point:

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. *In re Sawyer,* 124 U. S. 200, 211, 8 S. Ct. 482, 488; 31 L. Ed. 402; *Davis & Farnum Mfg. Co.* v. *Los Angeles,* 189 U. S. 207, 23 S. Ct. 498, 47 L. Ed. 778; *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 500, 45 S. Ct. 141, 69 L. Ed. 402. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its ex-

traordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. *Terrace* v. *Thompson*, 263 U. S. 197, 214, 44 S. Ct. 15, 17, 68 L. Ed. 255; *Packard* v. *Banton*, 264 U. S. 140, 143, 44 S. Ct. 257, 258, 68 L. Ed. 596; *Tyson & Bro.* v. *Banton*, 273 U. S. 418, 428, 47 S. Ct. 426, 427, 71 L. Ed. 718, 58 A. L. R. 1236; *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 452, 47 S. Ct. 681, 682, 71 L. Ed. 1146.

This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether the act complained of is lawful or unlawful. *Harkrader* v. *Wadley*, 172 U. S. 148, 19 S. Ct. 119, 43 L. Ed. 399; *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89, 95, 55 S. Ct. 678, 680, 79 L. Ed. 1322. The federal courts are without jurisdiction to try alleged criminal violations of state statutes. The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this Court if such construction or application is appropriately challenged on constitutional grounds. *Hygrade Provision Co.* v. *Sherman*, supra; *Fenner* v. *Boykin*, 271 U. S. 240, 46 S. Ct. 492, 70 L. Ed. 927.

Hence interference with the processes of the criminal law in state courts, in whose control they are lodged by the Constitution, and the determination of questions of criminal liability under state law by federal courts of equity can be justified only in most exceptional circumstances, and upon clear showing that an injunction is necessary in order to prevent irreparable injury. Cf. *Hygrade Provision Co.* v. *Sherman*, supra; *Cline* v. *Frink Dairy Co.*, supra; *Spielman Motor Co.* v. *Dodge*, supra. And in the exercise of the sound discretion, which guides the determination of courts of equity, scrupulous regard must be had for the rightful independence of state governments and a remedy infringing that independence which might otherwise be given should be withheld if sought on slight or inconsequential grounds. *Di Giovanni* v. *Camden Insurance Asso-*

ciation, 296 U. S. 64, 73, 56 S. Ct. 1, 5, 80 L. Ed. 47, and cases cited."

V.

The Danger that the Appellants would suffer irreparable loss was neither great nor immediate and the court below correctly so held.

Fenner v. Boykin, 271 U. S. 243;
Spielman Motor Co. v. *Dodge,* 295 U. S. 89-95.

E.

Discussion of Cases Cited by Appellants in Their Jurisdictional Statement.

The appellants have collected a large number of cases under nine (9) general propositions in support of their contentions that this Court should take jurisdiction of this cause.

To analyze the facts in each case and show their inapplicability to the facts and statute in this case would put an unnecessary burden on this Court and serve no useful purpose. We have, however, taken the first four cases under each of their propositions (except the "First", under which no authorities are cited) and have briefly analyzed such cases, and a summary of each follows:

"Second."

The appellants here contend that the trial court committed reversible error in failing to hold it was necessary for protection of appellants to enjoin the appellees.

In *Hague* v. *C. I. O., et al.,* 307 U. S. 496, this Court had before it the construction of a city ordinance of Jersey City, New Jersey, which required a permit from the Chief of Police for a public meeting at which the speaker would advocate obstruction of the government of the United States or

of a State, or a change in Government other than by lawful means. There was also for consideration before this Court an ordinance which prohibited the distributing or the strewing on any street or public place newspapers, papers, etc. It further appears from the facts that the C. I. O. was a labor organization and was seeking by the pamphlets which they were distributing to discuss their rights under the National Labor Act. This Court said on page 515 of that case:

> "In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of committing views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks."

In the *Hague* case the court below held the ordinance was void on its face (p. 516) and this Court affirmed that decree with minor qualifications (p. 518).

In *Ex parte Young*, 209 U. S. 123, an original application was made to this Court for leave to file writs of *habeas corpus* and certiorari on part of one Young. There was involved in that case statutes of the State of Minnesota, fixing the rate of various railroad companies for the carriage of merchandise. The court found the tax rates fixed by the statute were "confiscatory" and held the act was therefore unconstitutional (p. 149).

In *Pierce* v. *Society of Sisters*, 268 U. S. 510, a statute of the State of Oregon required every parent, guardian or other person having charge or custody of a child between eight and sixteen years of age to send them to *public school* and the failure to do so was declared a misdemeanor.

Swift & Co. v. *U. S.*, 276 U. S. 311, was an action by the United States in the Supreme Court of the District of Columbia sitting in equity, under Section 4 of the Sherman Anti-Trust Act, charging the defendants in that case with creating a monopoly. It has no application in this case.

"Third."

The appellants here contend that they had no adequate remedy at law.

In *Stratton, Secretary of State* v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530, it was held that a suit will not lie in a Federal Court to enjoin a State officer from collecting a tax that violates the Federal Constitution when the State law affords a legal remedy through payment of the tax under protest and suit to recover it from the collecting officer. No special circumstances are alleged in the bill which would render the legal remedy inadequate. An adequate legal remedy is afforded by Illinois law.

Risty v. *Chicago R. I. & P. Ry. Co.*, 270 U. S. 378-388, merely holds that "the test of equity jurisdiction in a Federal court is the inadequacy of the remedy on the law side of that court and not the inadequacy of the remedies *afforded* by the State courts. In this case, it did not appear that the State law afforded an adequate remedy, or that such remedy, if at all available, would not entail a multiplicity of suits.

Smyth v. *Ames*, 169 U. S. 466-(516-11), merely holds that the adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal court, is not to be conclusively determined by the statutes of the *particular State in which suit may be brought.*

Terrace v. *Thompson*, 263 U. S. 197, concerned the validity of a statute of the State of Washington which prohibited aliens who had not in good faith declared an intention to become citizens of the United States from taking or holding interests in land.

The statute was attacked on the ground that it was in conflict with the "due process" and "equal protection" clauses of the Fourteenth Amendment.

The Attorney General made a motion to dismiss on the grounds that the cause was not one cognizable in a court of equity. The District Court granted the motion and this Court affirmed the action of the District Court. This case is against appellants' contention and tends to strongly support the position of the appellees.

"Fourth."

The appellants here contend that the trial court committed reversible error in failing to hold that the acts and conduct of appellees were in violation of their constitutional rights.

In *Nashville C. & St. L. Ry. Co.* v. *McConnell*, 82 F. (2d) 65, the question for consideration was whether or not a labor union which did not represent any employees of an employer could lawfully picket the employer's plant.

In *Dearborn Pub. Co.* v. *Fitzgerald*, 271 F. 479 (District Court, N. P. Ohio E. P.) an injunction was sought by the publishing company against the Mayor of Cleveland seeking to restrain the arrest of vendors selling the "Dearborn Independent", a weekly newspaper containing an attack upon the Jewish race. The case is summed up briefly in the words of the court (p. 482):

> "The publication complained of cannot by any stretch of the imagination be classified as indecent, obscene or scandalous; but if it were, *the limit of the city's power would be to conduct a prosecution for the specific offense thus committed, and not the establishment of a censorship in advance of future publications*, and prohibition generally of the sale thereof upon the streets, in the same manner as other publications are sold" (Italics ours).

Johnson v. *Wells Fargo*, 239 U. S. 234, concerned the validity of a tax imposed upon express companies by the State of South Dakota based upon the gross earnings of

such companies. This statute was held to violate the constitution of that State, which required the property of a corporation to be taxed similarly to the tax imposed upon individuals.

Pierce v. *Society of Sisters,* 268 U. S. 510 (see point "Second").

"Fifth."

The appellants here contend that the trial court committed reversible error in failing to hold that the Illinois State statute was void because of vagueness and indefiniteness and by reason thereby denied the appellants their liberty without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

In *Herndon* v. *Lowry,* 301 U. S. 242, a criminal statute defining and providing penalty for insurrection, as *construed* and *applied* by State court in prosecution thereunder, held not to furnish a sufficiently ascertainable standard of guilt as a person was required to foresee if his action might in future incite others to insurrection.

In *Stromberg* v. *California,* 283 U. S. 359, State statute punishing the displaying of a red flag "as a symbol of *opposition* to organized government, held void as making criminal *peaceable* and orderly opposition to a government as organized and controlled by one political party by others not agreeing therewith violated guaranty of liberty.

In *United States* v. *Cohen Grocery Co.,* 255 U. S. 81, a Federal statute punishing "any unjust or unreasonable rate" etc. held void because no ascertainable standard provided.

In *Lanzetta et al.* v. *State,* 306 U. S. 451, a State statute defining and punishing as a "gangster" any person not engaged in any lawful occupation, *known* to be a member of a *gang* of 2 or more, who has been convicted three times as a disorderly person or convicted of any crime in any State, held void for uncertainty.

"Sixth."

The appellants here contend that the trial court committed reversible error in refusing to declare the Illinois State statute void because it deprived the appellants of their right of freedom of speech, freedom of the press and freedom of worship, contrary to the Fourteenth Amendment.

The case of *Cantwell* v. *Connecticut*, 310 U. S. 296, is readily distinguishable from the present one. It involved a State statute which forbids any person to solicit money or valuables for a religious cause unless a certificate therefor shall have first been procured from a designated official, who is required to determine whether such cause is a religious one and who may withhold his approval if he determines that it is not. This was held to be a *previous* restraint upon the free exercise of religion and a deprivation of liberty without due process of law. However, the court said, on page 306:

> "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to

what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."

Also, on page 308:

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts but acts and words likely to produce violence in others. *No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.*" (Italics ours)

It is to be noted that this case arose following a conviction in a State court under the statute complained of; it did not involve an attempt to impede the operation of the statute punishing the alleged crimes or misdemeanors, as is the present case, and the broad delegation of power to an administrative officer in the determination of what constitutes "a religious cause" was clearly a deprivation of liberty without due process.

Near v. *Minnesota*, 283 U. S. 697, arose by reason of the enforcement of the Minnesota statute providing for the issuance of an injunction against newspapers or periodicals publishing malicious, scandalous and defamatory matter. The newspaper complained of published serious charges against various officials, including the chief of police, county attorney, mayor, etc. The case largely concerned the propriety of injunctions to restrain and practically suppress a newspaper publishing statements which were deemed defamatory. The statute struck directly at the

freedom of the press. The court distinguished between the propriety of the use of the injunctive process on the one hand from the use of other legal processes to punish or prevent the publication of false statements on the other.

> "Under the statute, the publication of any statement is to be regarded as defamatory if it injures reputation and it is scandalous if it circulated charges of reprehensible conduct, whether criminal or otherwise, and the publication is thus deemed to invite public reprobation and to constitute a public scandal." (p. 710)

The above quotation was a finding of the Supreme Court of Minnesota, which the Supreme Court of the United States sharply criticized.

The Supreme Court said, on page 711:

> "In such a case, these officers are not left to their ordinary remedy in a suit for libel, or the authorities to a prosecution for criminal libel. Under this statute, a publisher of a newspaper or periodical, undertaking to conduct a campaign to expose and to censure official derelictions, and devoting his publication principally to that purpose, must face not simply the possibility of a verdict against him in a suit or prosecution for libel, but a determination that his newspaper or periodical is a public nuisance to be abated, and that this abatement and suppression will follow unless he is prepared with legal evidence to prove the truth of the charges and also to satisfy the court that, in addition to being true, the matter was published with good motives and for justifiable ends."

Also, on page 715:

> "But it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that the common law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not

> abolished by the protection extended in our constitutions. id. pp. 883, 884. The law of criminal libel rests upon that secure foundation. * * * For whatever wrong the appellant has committed or may commit, by his publications, the State appropriately affords both public and private redress by its libel laws. As has been noted, the statute in question does not deal with punishments; it provides for no punishment, except in case of contempt for violation of the court's order, but for suppression and injunction, that is, for restraint upon publication."

The Court considers the attempts to impose "previous" restraints upon publications as compared to the punishment to be meted out to those who violate rules of decency and proper conduct in publishing matter offensive to others, and said on page 718:

> "The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions."

The case of *Schneider* v. *State*, 308 U. S. 147, involved a number of municipal ordinances designed to prevent the passing out of handbills in the streets or other public places and the decision of the Supreme Court practically amounted to a re-affirmation of the principles announced in many

earlier cases and adhered to in the later case of *Cantwell* v. *Connecticut*, 310 U. S. 296, to the effect that an ordinance may not abridge the constitutional liberty of those who are rightfully on the streets to impart information, through speech or the distribution of literature, by requiring the licensing of the distributor of circulars or canvassers from house to house, by the police after an inquiry amounting practically to censorship.

The Court said, on page 164:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

The case of *Thornhill* v. *Alabama*, 310 U. S. 88, involved a statute of the State of Alabama prohibiting persons, without just cause or legal excuse, from going near or loitering about the premises of any other person or corporation engaged in a lawful business for the purpose or intent of influencing other persons not to trade with or have business dealings with or be employed by such other person or corporation or picketing the place of business of other persons, etc.

The Court held the statute invalid, but said on page 105:

> "The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted. But no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter. We are not now concerned with picketing *en masse* or otherwise conducted which might occasion such imminent and aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger."

"Seventh."

The appellants here contend that the trial court committed reversible error in refusing to declare the State statute unconstitutional and void as construed and applied by appellees.

Cantwell v. *Connecticut*, 310 U. S. 296, (discussed under point "Sixth").

Schneider v. *State*, 308 U. S. 147, (discussed under point "Sixth").

In *Lovell* v. *City of Griffin*, 303 U. S. 444, the validity of a city ordinance was before this Court. The ordinance forbade as nuisance the distribution, by hand or otherwise, of literature of any kind without obtaining permission from the city manager.

In *Fiske* v. *Kansas*, 274 U. S. 380, the construction of a "criminal syndicalism" statute of the State of Kansas was before this Court on writ of error.

This Court held (p. 387) that there was no charge or evidence that the defendant secured members for an or-

ganization that advocated any crime, violence or other unlawful methods as a means of effecting industrial or political changes or revolution.

"Eighth."

The appellants here contend that the court committed reversible error in failing to hold that even though the statute was valid and constitutional, that the construction placed upon it by appellees was such as to deny appellants their constitutional rights.

Oney v. *City of Oklahoma City.* We are unable to find any reported opinion in this case.)

In *South Holland* v. *Stein,* 373 Ill. 472, an ordinance requiring a license to solicit orders for goods, etc., was enforced so as to preclude solicitation of subscriptions to educational or religious magazines. It was held void as not being within the powers granted the city, and to prohibit giving or furnishing literature would violate the freedom of speech and of the press.

In *Kennedy, et al.* v. *City of Moscow* (Idaho), 39 F. S. 26, the court there had for consideration the violation of a municipal ordinance prohibiting the distribution of any printed matter along or upon any street, alley, sidewalk, or park, etc., within the city limits without a permit obtained from a police officer, the saluting of the flag in the presence of the officer, and reciting the pledge of allegiance. Such applicant was further required to furnish sufficient information of identification.

Hague v. *C. I. O. et al.,* 307 U. S. 496, (discussed under point "Second").

"Ninth."

The appellants here contend the trial court committed reversible error in failing to hold that the statute in question was entirely beyond the police power of the State and

beyond the legislature's province to enact such law because there can be no libel of a class of persons.

The cases of *People* v. *Edmonson*, 4 N. Y. S. (2d) 257, 168 Misc. 142, and *People* v. *Downer*, 6 N. Y. S. (2d) 566, have no application to the law of the State of Illinois. This is not the law of Illinois. See *People* v. *Spielman*, cited and discussed under our Point II.

There is attached to appellants' jurisdictional statement "Appendix B", an opinion rendered by the District Court of Kentucky (*Bealer, et al.* v. *Smith, et al.*, Fed. Supp., decided June 4, 1941). In that case the court simply held that the distribution of printed matter by the Jehovah's Witnesses did not constitute "sedition" under the Kentucky statute. The court held that the statute was "not applicable or effective to prohibit or interfere with the plaintiffs or other of Jehovah's Witnesses in selling or distributing" printed matter, etc. The court then said:

> "The court concludes it is unnecessary to consider or determine the question presented as to the constitutionality of the act."

The appellants attack that portion of the opinion, wherein the court said:

> "The plaintiffs are at liberty, so far as the evidence shows, to propagate their beliefs, distribute their literature and receive contributions anywhere outside St. Clair and Saline counties."

When the above statement is read in connection with the opinion, it is clear that the court rightfully, in our opinion, took the view that *even if the appellants were unwilling to adjudicate their rights under the Illinois law and in the Illinois courts*, they still had the whole State of Illinois to carry on their work. This attitude of the court below is well illustrated where it said:

> "Here the danger of irreparable loss is neither great nor immediate and such loss as may be threatened can

be obviated in a large measure by the *plaintiffs themselves, if they so desire, pending the hearing of the case on its merits or the authoritative construction of the statute by the courts of the State''* (Italics ours).

We respectfully urge this Court to consider the factual situations in the present case, *i. e.*

(a) That serious riots had occurred in the vicinity of St. Clair and Saline counties, resulting in serious injury to persons and property as the direct and immediate result of appellants' attacks on the Catholic and Protestant religious doctrines, necessitating the calling of the State Police to quell such riots.

(b) That the same situation was again about to arise in St. Clair and Saline counties, and the county and city officials, acting in the "honest belief" that for the preservation of the peace and order of these communities it was necessary, in their official capacities, to take the steps which they did.

(c) That the said officials acted under a statute declared valid by the courts of Illinois, and which the court below has said was not unconstitutional.

In Conclusion.

The appellees herein respectfully suggest:

1. That the court dismiss this appeal as to the appellees, Dwight H. Green, Governor of Illinois, and George F. Barrett, Attorney General of the State of Illinois, in accordance with their motion included herein.

2. That if this Court should deny said motion as to appellees, Dwight H. Green and George F. Barrett, in that event that the cause be dismissed as to all appellees, or that this Court refuse to accept jurisdiction thereof, or, in the alter-

native that this Court affirm the court below, as per motions of appellees to dismiss or affirm included herein.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois,
Appellees.

Address: Supreme Court Bldg., Springfield, Illinois.

HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois, Attorney for Tom Gram, Individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, Individually, and as Deputy Sheriff of Saline County, Illinois, Trafton Dennis, Individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, Individually, and as Justice of the Peace of Saline County, Illinois,
Appellees.

Address: Eldorado, Illinois.

GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois, Attorney for "Doc" Prindable, Individually, and as Sheriff of St. Clair County, Illinois, Louis P.

Zerweck, Individually, and as State's Attorney of St. Clair County, Illinois, George Remnsnider, Individually, and as Mayor of the City of Belleville, Illinois, Thomas Lonie, Individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, Individually, and as Justice of the Peace of St. Clair County, Illinois,

Appellees.

Address: 30A Public Square, Belleville, Illinois.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

MOTION OF APPELLEES DWIGHT H. GREEN AND GEORGE F. BARRETT TO DISMISS.

Now comes Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf, and move the Court to dismiss the appeal herein on the ground that these parties are not properly party appellees in the above entitled cause; that said appellees are sued only in their official capacities; that said appellees were not in office at the time of the occurrences mentioned in the appellants' (plaintiffs') com-

plaint; and that no relief is sought against said appellees in complaint of plaintiffs; that said appellees are joined as parties to the said cause only by reason of the provisions of the statutes requiring notice to them (28 U. S. C. 380), and, therefore, these appellees say that the said cause should be dismissed as to such appellees, as will more fully appear from the Statement of Grounds Making Against the Jurisdiction of this Court, filed herewith.

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

vs. *Appellants,*

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

Now comes Tom Gram, individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, individually, and as Deputy Sheriff of Saline County, Illinois, Trafton Dennis, individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, individually, and as Justice of the Peace of Saline County, Illinois (herein called the Saline County Appellants), by and through Harry J. Flanders, Assistant State's Attorney of Saline County, Illinois, their attorney in this behalf, and "Doc" Prindable, individually, and as Sheriff of St. Clair County, Illinois, Louis P. Zerweck, individually, and as State's Attorney of St. Clair County, Illinois, George Remnsnider, individually, and as Mayor of the City of Belleville, Illinois, Thomas Lonie, individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, individually, and as Justice of the Peace of St. Clair County, Illinois (herein called the St. Clair County Appellants), by and through Georg F. Kelling, Assistant State's Attorney for St. Clair County, Illinois, their attorney in this behalf, and if the

said Motion of Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf (presented herewith), to dismiss the appeal on the grounds that the said Dwight H. Green and George F. Barrett are not proper parties, herein, should be denied by this Court, then the said Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, as Attorney General of the tSate of Illinois, by and through George F. Barrett, their attorney in this behalf, join with the other named appellees herein, and all appellees herein move the court to dismiss the said appeal on the grounds that no substantial Federal qeustion is presented by the record, and the said appellees and each of them further move this Court and say that if the said Motions are not granted, this Court should affirm the decision of the District Court of the State of Illinois on the grounds that the questions on which the decision of this case depends are so unsubstantial as not to need further argument, all of which more fully appears in the Statement of Grounds Making Against Jurisdiction of this Court, filed herewith.

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois;
HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois, Attorney for Saline County Appellees;
GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois, Attorney for St. Clair County Appellees.

No. 567. BEVINS ET AL. *v.* PRINDABLE ET AL. Appeal from the District Court of the United States for the Eastern District of Illinois. October 13, 1941. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *Beal* v. *Missouri Pacific R. Co.*, 312 U. S. 45, 49–51; *Watson* v. *Buck*, 313 U. S. 387, 400–01. *Messrs.*

Hayden C. Covington and *Joseph F. Rutherford* for appellants. *Mr. George F. Barrett*, Attorney General of Illinois, for appellees. Reported below: 39 F. Supp. 708.